

Chapter 8: Comment Analysis Report

In March 2004, NOAA Fisheries and the Council issued the *Draft Environmental Impact Statement for the Bering Sea and Aleutian Islands Crab Fisheries* (hereafter referred to as the DEIS). NOAA Fisheries accepted public comments on the DEIS during the 45-day public comment period from March 19 to May 3, 2004. NOAA Fisheries received 16 letters of public comment.

This Comment Analysis Report (CAR) provides the public comments received during the comment period and presents the agency's response to the public comments. Changes to the EIS from draft to final as a result of public comment are noted in this report. A draft version of the CAR was made available to NOAA Fisheries, the Council, and interested public. The draft CAR was presented to the Council at its June 2004 meeting. The draft CAR was also used as a tool by the EIS authors and the Comment Analysis Team to revise the DEIS for the Final EIS and respond to each statement of concern.

The Role of Public Comment

NEPA is a procedural law intended to facilitate better government decisions concerning the management of our lands and oceans. The law has an environmental emphasis. Drafters of the law believed that by requiring a process designed to provide decision makers with the best information available about a proposed action and its various alternatives, fewer adverse environmental impacts would occur. NEPA does not dictate protection of the environment, but instead assumes that common sense and good judgment, based on a thorough analysis of impacts of various alternatives, will result in the development of the Nation's resources in a way that minimizes adverse impacts to our environment. This is achieved by requiring an open public process whereby the responsible government agency, combined with the stakeholders associated with a particular natural resource and development project, pull together and present relevant information for use in making decisions.

In conformance with NEPA requirements, NOAA Fisheries solicited public comment on the DEIS. Several comments received on the DEIS questioned the utility of the DEIS and the meaningfulness of the public comment process given that in January 2004, the U.S. Congress amended the Magnuson-Stevens Act to require the Secretary of Commerce to approve the Voluntary Three-Pie Cooperative Program (Program). Congress amended the Magnuson-Stevens Act in the Consolidated Appropriations Act of 2004, such that the Secretary of Commerce must approve the Program by January 1, 2005, as it was approved by the Council between June 2002 and April 2003, including all trailing amendments that were adopted by the Council prior January 2004. 16 U.S.C. 1862; MSA section 313(j)(1).

The comments received on the DEIS and the Program are relevant and meaningful comments for decision making. Although Congress mandated the Secretary of Commerce to approve the Program as described in the Magnuson-Stevens Act, Congress provided the Council with the discretion to approve subsequent amendments to the Program prior to January 1, 2005. Under newly amended section 313(j)(1), the Secretary cannot amend the Program prior to January 1, 2005, unless the Council forwards a recommendation for change to the Secretary prior to January 1, 2005. Given this discretion, the Council considered subsequent program amendments to the Program at its June 2004 meeting. Because of the Council's statutory ability to recommend subsequent program amendments to the Program prior to January 1, 2005, the Council considered the comments received and determined whether subsequent amendments to the Program were warranted.

Because Congress mandated approval of the Program, it is important for the reader to keep in mind that the appropriate frame of reference for considering the public comments received on the DEIS is not whether some other alternative should be identified as the preferred alternative for the Final EIS, but whether subsequent program amendments to the legislated Program should be made in light of the comments received. The Program described in section 313(j) and as modified by the Council, is Alternative 2 of the EIS.

What is the Response to Public Comments?

NEPA requires government agencies to include in a Final Environmental Impact Statement all the comments received on the Draft. The Final EIS must include responses to the comments, and if changes to the DEIS are made as a result of those comments, indication of where they were made in the document.

According to CEQ regulations for implementing NEPA (40 CFR §1503.4), an agency preparing final EIS shall assess and consider comments both individually and collectively. and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analysis.
4. Make factual corrections.
5. Explain why the comment does not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

The draft CAR served as an intermediate document that informed NOAA Fisheries, the Council, and the public of the additional issues addressed in the Final EIS. This CAR serves as the document for public comments received and the agency's responses to comment document for the DEIS. NOAA Fisheries has undertaken a careful and deliberate approach to ensure that all substantive public comments were reviewed, considered, and responded to.

Analysis of Public Comments

The analysis of public comment on the DEIS was a multi-stage process that included reviewing the comments within each submission, preparing responses, and reviewing the responses. The process is explained in detail below.

The NMFS Juneau staff copied and logged all incoming comments, maintaining a comprehensive list of all public comments. Staff then assigned each letter or email a unique submission ID#. Each submission was reviewed by the Comment Analysis Team. The Team divided each submission into a series of 'comments', each of which was assigned a Comment ID#. The goal was to capture each sentence and paragraph in a comment letter containing substantive content pertinent to the DEIS. Substantive content constituted assertions, suggested alternatives or actions, data, background information or clarifications relating to the DEIS document or its preparation. Within the 16 letters received by NOAA Fisheries, the team identified 113 specific substantive comments. The Team then prepared a response for each comment within the submission.

The comments are presented in this report in the order in which they were received. During the process of identifying statements of concern, all comments were treated equally. The emphasis is on the content of the comments. They were not weighted by organizational affiliation or other status of commenters. No effort has been made to tabulate the number of people for or against a specific aspect of the DEIS. In the interests of producing a Final EIS that both meets the mission of NOAA Fisheries and best serves all stakeholders, all comments have been considered equally on their merits.

Quality Control and Review

All comments and responses were reviewed by the Comment Analysis Team and NOAA General Counsel. Additionally, various procedures were established in the analysis process to prevent a submission or comment from being inadvertently omitted. Communication and cross-checking between the submission lists and the comment list has ensured that all logged submissions received during the comment period are included in this report.

8.1 Response to Comments

Response to John Garner, North Pacific Crab Association

Comment 1. The comment generally supports the analysis in the DEIS and the preferred alternative. The comment also appreciated additions made to the analysis contained in the DEIS, specifically, the consideration of long term and short term effects of the alternatives, and the definition and application of the concept of efficiency.

Response: NOAA Fisheries acknowledges the comment.

Comment 2. Only the preferred alternative has a structure that ensures processors will be able to slow processing activities, and for that reason it provides the best opportunity for processors to achieve higher yields and therefore reduce waste discharge.

Response: NOAA Fisheries acknowledges the comment.

Comment 3. In response to the congressional mandate, the Council recommended a system designed to balance the interests of communities and of the harvesting and processing sectors that are current investors in the fishery. The Program's significant improvements to the net economic benefits to the nation will be shared by all sectors.

Response: NOAA Fisheries acknowledges the comment.

Comments in Appendix A to comments from John Garner

The responses to the comments and editorial suggestions in Appendix A will follow the organization of Appendix A by referring to the DEIS section and page numbers.

Executive Summary

Pg ES-3 Alternative 2: Clarify the cooperative component in description of the Program alternative.

Response: The comment seems to confuse alternatives 2 and 4 by describing the provisions of alternative 4 but specifically referencing alternative 2. The descriptions of alternatives in the executive summary are only intended to provide a very general description of the alternatives and cannot incorporate all aspects. In the interest of clarity, the description of alternative 4, however, will be expanded to explain that processor/cooperative associations are based on landing patterns in the year prior to implementation.

ES-5: The EIS should make note of the fact that the buyback program is available, even though the effects may not yet be known.

Response: The EIS does discuss the BSAI Crab Fisheries Capacity Reduction Program, a.k.a. the buyback program. As the buyback program is ongoing, the Final EIS will be updated to include the most recent information on the buyback program. Section 4.9.8 *Cumulative effects analysis for economics and socioeconomics* does consider the possible effects of the buyback, as noted. This is the appropriate section of the analysis for consideration of the issue, since it is a cumulative effects issue. The overall effects of buyback are likely to be short term since shares are freely tradable under this program.

ES-8 and ES-14: Regionalization could enhance harvester efficiency. The EIS would benefit from a discussion of this possibility.

Response: NOAA Fisheries disagrees that the EIS should be augmented beyond the existing discussion on harvester efficiency. Generally, harvest efficiency is negatively impacted by regionalization and community protections. Economic efficiency will be greatest in a program with the least geographic restrictions on landings. Regionalization would not force efficiencies that would be realized in its absence. The EIS analysis, in section 4.6.2.1 *Economic efficiency in the harvesting sector*, discusses the impacts of regionalization and community protections on harvester efficiency.

ES-9: Editorial - The repeated lines in the table will be deleted.

ES-9 to ES-12: Table ES-2 does not distinguish between short-term and long-term impacts on efficiency (harvester, processor, and production).

Response: The executive summary is not intended to be a comprehensive analysis but a summary of the most significant results. The executive summary achieves that end. Short-term and long-term effects are discussed in the main text in section 4.6.2 *Economic efficiency in the harvesting and processing sector* (see pp. 4-151 to 4-171).

ES-14: The section *Effects of processor efficiency* should discuss the short term effects.

Response: The executive summary is not intended to be a comprehensive analysis but a summary of the most significant results. The executive summary achieves that end. Short term effects are discussed in the main text in section 4.6.2.2 *Economic efficiency in the processing sector* (see pp. 4-164 to 4-170).

Chapter 1

p. 1-6: Define the term ‘economic efficiency’ and ‘production efficiency’.

Response: Economic efficiency in the broadest sense is the sum consumer surplus and producer surplus and is achieved if the theoretic fully informed, competitive market is attained. Consumer surplus is the difference between the sum of consumer willingness to pay for a good and the total amount paid for that good. Producer surplus is the difference between the sum of producer willingness to accept payment for a good and the total amount accepted for the good. Production efficiency is the sum of harvester efficiency and processor efficiency. These definitions are provided in the Final EIS.

p. 1-18: Define ‘revenues’ and ‘costs’.

Response: Total revenue is the total amount paid for goods sold. Total cost is the sum of all variable costs and fixed costs (i.e., the total amount expended in production). Variable costs are those costs that are subject to variation in relatively short periods of time. Fixed costs are those costs that are subject to variation only in relatively long periods of time. These definitions are provided in the Final EIS.

p. 1-19: The following statement is inaccurate: ‘The current crab processing capacity is designed to process crab quickly at the end of seasons when the entire fleet offloads its catch’

Response: NOAA Fisheries agrees. This section will be modified to explain that processing capacity is determined to secure market share and to avoid deadloss. The discussion on p. 4-375, in section 4.9.8 *Cumulative effects analysis for economics and socioeconomics*, will also be modified.

p. 1-20: The analysis does not consider the effects on other fishermen if processing capacity is lost due to the alternative selected. The preferred alternative may be the only alternative that will encourage the continued operation of facilities in Saint Paul and Saint George that fishermen depend on to process halibut and salmon.

Response: The appropriate place for the discussion of the interactive effects with other fisheries is in the cumulative effects section of the document. That section does discuss the interaction of crab processing capacity with processing other fisheries. NOAA Fisheries disagrees with the assertion that no plants will operate in St. Paul or St. George under the IFQ alternative because that alternative contains regionalization provisions that are likely to compel continued processing in those communities. In addition, several small halibut processing facilities have opened in remote areas to serve local fishermen in the absence of substantial supporting groundfish, crab, or salmon processing. Whether this type of processing would occur in the Pribilof Islands is uncertain.

p. 1-21: A rationalized fishery should provide a safer work environment for processor workers.

Response: NOAA Fisheries agrees. The Final EIS was modified in this section and section 4.6.9 *Effects on vessel safety* will be expanded to reflect that slowing the race for fish could improve safety at processing facilities.

Chapter 2

p. 2-46: The DEIS does not include the anti-trust laws and right of first refusal option in the discussion of processor quota transferability.

Response: The sentence stating that use caps are the “only” restriction on share transfers is corrected in the Final EIS by removing the word “only.”

p. 2-83: Note in the text that, under status quo, American Fisheries Act (AFA) qualified processors are capped at their historical share of crab, and existing laws prevent processors from forming a monopoly.

Response: NOAA Fisheries disagrees. This section is intended to describe the existing management program for crab fisheries. Although AFA and antitrust do limit consolidation, they are not specific parts of the management program for crab.

Chapter 3

p. 3-112 to 3-117: Update the descriptions of waste discharge for King Cove and Dutch Harbor processors.

Response: NOAA Fisheries made requested changes in the Final EIS to section 3.3.2 *Physical environment in the vicinity of crab processors*, to update the information on the King Cove and Dutch Harbor processors.

Section 3.4.4.1: The text needs to explain the basis upon which vessel owner residence was determined for the tables.

Response: NOAA Fisheries agrees. The Final EIS was modified on this section to clarify the basis for assigning owner residence as shown in the tables.

Section 3.4.4.1: The text should point out the method used to calculate average percentage.

Response: NOAA Fisheries disagrees. The average percentage is an average percentage that is not weighted. In the absence of a statement that it is weighted, there is no reason to assume that it is weighted.

Chapter 4

Comments from the Council’s Scientific and Statistical Committee

- **The DEIS assumes that binding arbitration will occur.**

Response: The discussion of arbitration makes clear that the effects of the arbitration program are that prices will be set based on the potential for arbitration, even if arbitration is avoided. On page 4-160, the discussion of the harvest efficiency makes clear that the effects of the arbitration program will be realized “[a]lthough arbitration may take place in few instances”.

- **4-150 - The DEIS refers to capitalization as a physical concept, when it is an economic concept.**

Response: NOAA Fisheries agrees. The discussion will be changed to reflect this comment.

- **4-157 – The last sentence on the page should not be a conditional.**

Response: NOAA Fisheries disagrees. The ability of harvesters to drive processors to compete for A share deliveries using B share prices is not established (see footnote 15 on p. 4-160). The conditional is correct.

- **4-160 – The first full paragraph should be modified to apply only in the instance of fully vertically integrated companies.**

Response: The statement is modified in the Final EIS to read “Vertical integration **may** reduce any dependence on harvesters for landings and **may** provide additional information to processors that can be used in negotiations.” Complete common ownership (i.e., 100 percent) is not necessary, because 50 percent (or possibly less) may be adequate to control landings and decision making.

p. 4-56: Editorial - The typo is corrected in the Final EIS.

p. 4-143 – Operational barriers to entry will be reduced by rationalization of the fisheries.

Response: NOAA Fisheries disagrees. This comment assumes that the only way to enter the status quo fishery is on a large scale. This is not true as demonstrated by some small participants in the current fisheries.

p. 4-144 – Entering processors will have an advantage over existing processors under the IFQ alternative because existing processors have facilities that are not useful in a rationalized fishery and because entry will occur in places that exploit transportation cost advantages.

Response: NOAA Fisheries disagrees. This comment assumes that the current processors depend on and have facilities that are used for only crab processing, which is generally not the case. Also, the comment assumes that product form will change such that current processing facilities will not be useful, which is also unlikely to be the case. Although transportation costs may have greater import under the IFQ alternative in the long run, the relevancy of poor weather effects on air shipments applies to all locations that could see processor entry, so it is unclear how that point is applicable.

p. 4-144 – The EIS should note that incentives for vertical integration will be increased under the IFQ alternative (Alternative 3) and the Cooperative alternative (Alternative 4).

Response: With respect to the IFQ alternative (alternative 3), the discussion the comment is requesting is at the bottom of page 4-142, in section *4.6.1.1 Entry to the harvesting sector*, which states that vertical integration will increase. With respect to the cooperative alternative (alternative 4), the incentive for processors to purchase harvest shares is substantially reduced by the processor protections in that program.

p. 4-145 – The assumption that entering processors’ dependency on share holdings is greater than entering harvesters’ dependency on share holdings should be removed from the EIS.

Response: NOAA Fisheries disagrees. It is clear that a portion of the processing in the fishery (10 percent) can be accessed without processing shares. In context, the sentence simply indicates that a processor without share holdings will have the opportunity to enter and continue in the fishery.

p. 4-147 – Consistent terminology is needed in construction of the table used to compare rationalization alternatives.

Response: The term “purchase” was deleted in the Final EIS to make the table entries consistent.

p. 4-149 and 4-150 - Editorial - The table reference will be changed.

p. 4-149 - A statement that processing facilities that are used for fisheries other than crab should be paralleled by a similar discussion concerning harvesting vessels and gear.

Response: A parallel discussion for harvesters is in section *4.6.2.1 Economic efficiency in the harvesting sector*, on pages 4-154 to 4-156.

p. 4-150 - The EIS should discuss the distributional impacts of the cooperative alternative on processors and communities.

Response: The discussions in section *4.6.2.1 Economic efficiency in the harvesting sector*, on pages 4-162 to 4-163, and section *4.6.2.2 Economic efficiency in the processing sector*, on pages 4-168 to 4-170, describe the distributional effect of the landing requirements between harvesters and processors. Although 90 percent of a cooperative’s landings are required to be to the associated processor (which is determined based on landings in the year prior to implementation), the provision for movement between cooperatives maintains some competition among processors for those landings, which is overlooked by this comment, but is discussed in the analysis. The discussion of community impacts in section *4.6.5.3 Community/social impacts of alternative: Processing sector*, on page 4-203, also describes the impact of this alternative on community-based processing. That discussion makes clear that the landing requirements will affect the distribution of landings. The comment suggests that communities distant from the fishing grounds will be harmed by this alternative. Given the current low guideline harvest levels (GHLs), the opposite could be true if processors in those distant communities are able to attract only a few deliveries from a harvester. In any case, drawing a conclusion on the issue is a matter of speculation that should be excluded from the EIS.

p. 4-155 – Several factors may impact price differentials in different locations.

Response: NOAA Fisheries agrees. The discussion was expanded in the Final EIS to include other factors, besides distance to the fishing grounds, that may impact prices.

p. 4-157 – Regional and community landing requirements may contribute to harvester efficiency.

Response: NOAA Fisheries disagrees. The comment is incorrect in arguing that restrictions on the mobility of activity that are caused by regionalization and community protections will increase efficiency beyond that which would be realized in the absence of those restrictions. The absence of the requirement of a buyer in the North region in the IFQ program will not decrease efficiency. If crab that is required to be delivered to the North region has value in production, it will be purchased and processed. If it does not have value in

production, the absence of a North region purchaser will increase efficiency, since production would be at a loss. Since this second scenario is very unlikely, it is not discussed in the EIS.

p. 4-160 and 163 – Harvester strikes will be an effective negotiating tactic under the Three-Pie Voluntary Cooperative alternative.

Response: The ability to strike will be very limited and conflicts with the system of arbitration. If a harvester wishes to use arbitration it must occur in the preseason or early in the season. Once arbitration is undertaken a binding contract is formed that prevents a harvester from striking. Although striking could be resorted to, it is unlikely to be an effective negotiating tool in this system since it would require a harvester to forgo arbitration, which is likely to be more effective.

p. 4-160 – Editorial - The word “more” is missing from the sentence and was added in the Final EIS. If harvesters can stimulate competition for A share landings, more harvester revenues could be realized.

p. 4-165 – The commenter is concerned about the distinction between short-term and long-term effects.

Response: Short-term effects are realized in transitions (including but not limited to the implementation of the program). These transitional impacts are discussed in section 4.6.2.2 *Economic efficiency in the processing sector*, on page 4-166.

p. 4-166 – The DEIS states unequivocally that processor efficiency will be realized under the IFQ alternative. The EIS should note that the IFQ program would improve the harvester’s position in collective bargaining and strikes relative to the processors.

Response: NOAA Fisheries disagrees. The market power of harvesters under the IFQ alternative is not dependent on "strikes," as strikes are typically defined (i.e., the withholding of performance by a party to a contract to induce concessions from the other party). If the commenter is characterizing the withholding of deliveries by a harvester from a potential buyer (who is not a party to a contract) to stimulate competition among processors as a "strike," that activity is likely to provide negotiating leverage to harvesters and is discussed on pages 4-156 to 4-157 and 4-165 to 4-166 of the EIS.

p. 4-168 – A bidding war could occur in the year prior to implementation under the Cooperative alternative (Alternative 4). In addition, a processor gains nothing from the penalty suffered by a harvester that chooses to leave a cooperative.

Response: The bidding war referred to by the commenter is discussed in section 4.6.2.1 *Economic efficiency in the harvesting sector*, on page 4-163, and 4.6.2.2 *Economic efficiency in the processing sector*, on pages 4-169 to 4-170. The forfeiture of 10 percent of a harvester’s shares to a cooperative on movement from the cooperative would benefit the processor through the processor delivery requirement that binds the cooperative. While fishermen may benefit, the processor will also benefit.

p. 4-169 – Editorial - The word “year” was omitted and was included in the Final EIS.

p. 4-173 – Editorial - The title of the table was changed to “production efficiency under each alternative” in the Final EIS.

p. 4-179 – The EIS should include a discussion of effects of the alternatives on processing in other fisheries.

Response: Harvest sector spillover effects are included here because the actions all include sideboards directly limiting harvester participation in other fisheries. The cumulative effects section of the analysis includes implications on processing in other fisheries in several table entries (Table 4.9-17).

p. 4-181 – Editorial - The typo will be corrected so that headings refer to “other fisheries”

p. 4-188 to 4-193 - The method for determination of residence should be included in the analysis.

Response: NOAA Fisheries agrees. The Final EIS will be modified in this section to clarify the basis for assigning owner residence as shown in the tables.

p. 4-239 – The analysis mischaracterizes the impact of consolidation of processing on vessel safety by stating that processor consolidation may result in a situation where vessel owners or captains have less autonomy to take weather into account when deciding when to fish.

Response: NOAA Fisheries disagrees that the discussion in section 4.6.9 *Effects on vessel safety*, on page 4-239, mischaracterizes the issue of the potential effects of processor consolidation on vessel safety. This section analyses the concern that processor consolidation could have negative impacts on vessel safety and then discusses the Program provisions that counter balance these potential negative impacts.

p. 4-301 – The analysis of the effects of other fisheries on reproductive success of Bristol Bay red king crab is inconsistent.

Response: The text in section 4.9.2 *Cumulative effects analysis for crab*, on pages 4-284 and 4-285 is correct that the fisheries have an insignificant affect on Bristol Bay red king crab reproductive success. Table 4.9-3 was corrected to reflect this in the Final EIS.

p. 4-361 – A definition of “crab only” should be included.

Response: NOAA Fisheries agrees that the EIS should define what is meant by “crab only”. “Crab only” refers to anyone that is entirely or almost entirely dependent on crab for revenues. The Final EIS clarifies this point.

p. 4-378 – Table 4.6-14, referenced in Table 4.9-17, should cite data that concerns the communities where processing will occur.

Response: The reference to table 4.6-14 in table 4.9-17 is incorrect and was omitted from the Final EIS. NOAA Fisheries agrees that processing impacts on communities are important, except that the ability of analysts to present community impacts on processing is limited by confidentiality. Therefore, no such table is included in the main text of the EIS.

p. 4-384 – Editorial - NOAA Fisheries agrees that “remaining” should be substituted for “rebinding”.

p. 4-390 to 4-393 - **Editorial** – NOAA Fisheries agrees. Repeated lines in the tables were deleted in the Final EIS.

Appendix 1 - Regulatory Impact Review (RIR)

p. 570 **Editorial** - The symbol “*” refers to data that are withheld for confidentiality. The Final EIS was revised consistent with this response.

p. 577 - **The analysis should acknowledge that the USCG has independent monitoring and enforcement. In addition, the slowing of the race for fish will necessitate wider patrol areas over longer periods of time than occurs during recent short seasons.**

Response: This section is intended to cover monitoring and management of program regulations, which are the purview of NOAA Fisheries and the State of Alaska. The potential changes to monitoring and enforcement, including the additional costs of monitoring and management during the extended seasons, are also discussed on page 593.

p. 579 - **Editorial** - The word ‘of’ was inserted in the Final EIS.

pp. 585 to 591 **Editorial** - The titles of sections 4.3.1.2 and 4.3.1.3 are consistent in the Final EIS.

Response to Paul J. Duffy, Golden Shamrock, Inc.

Comment 1. In section 4.1.1 *Projected changes to State management of BSAI crab fisheries*, the analysis of observer coverage on catcher/processors that starts on page 4-19 incorrectly states that catcher/processors currently violate state regulations. Crab catcher/processors have been carrying Alaska Department of Fish and Game (ADF&G) certified observers for 16 years and there has not been one enforcement action for sublegal crab taken by catcher/processors during this time. It does not make sense that anyone fishing under an IFQ program would keep sublegal crab as part of their quota.

Response: NOAA Fisheries has removed the speculative statements and revised this analysis in the Final EIS.

Response to Arni Thomson, Alaska Crab Coalition

Comment 1. The DEIS complies with NEPA and provides an analysis that complies with applicable Federal laws and Executive orders. Additionally, the DEIS’s description of the preferred alternative is exactly the program referred to in section 313(j) of the Magnuson-Stevens Act.

Response: NOAA Fisheries acknowledges the comment. In June 2004, the Council adopted the Program, with minor adjustments, as Amendments 18 and 19 to the FMP. The legislated Program, as modified by the Council, is represented by Alternative 2, the preferred alternative.

Comment 2. The EIS should include a copy of Senator Ted Stevens' floor statement from the Congressional Record, January 22, 2004, at S150-S153.

Response: NOAA Fisheries agrees and included this document in the Final EIS in Appendix 2.

Comment 3. The comment highlights some of the more important points addressed in the DEIS regarding conservation and resource benefits to be derived from implementation of the Program.

Response: NOAA Fisheries acknowledges the comment.

Comment 4. The commenter is not aware of the types of violations by catcher/processors discussed in section 4.1.1 *Projected changes to State management of BSAI crab fisheries*.

Response: The statements of speculation on catcher/processor violations were removed from the Final EIS.

Comment 5. Catcher/processor owners are working with NMFS Enforcement and ADF&G on implementing monitoring options other than two observers for catcher/processors.

Response: NOAA Fisheries acknowledges the comment.

Response to John (Barney) Olsen and Coleman Anderson

The comments of John (Barney) Olsen and Coleman Anderson are substantively equivalent and are addressed in a single response.

Comment 1. The EIS understates the loss of jobs under the preferred alternative and needs to explain the long term benefits to crew. The DEIS has neglected to fully explain the economic hardships for captains and crew.

Response: NOAA Fisheries disagrees. The EIS contains an adequate analysis of the effects of the alternatives on captain and crew employment. Section 4.6.3 *Captains and Crew* states that steadier employment will be available to fewer crew under all rationalization alternatives, indicating the potential loss of jobs under a rationalized fishery. Section 4.6.3 also analyzes the potential long term benefits and hardships for captains and crew. The EIS provides no quantitative estimate of job losses, since such a number cannot be reliably estimated and therefore would be speculative. The assertion that C shares are intended to provide a long term benefit to captains and crew (ES-4) is a statement of Council intent and is not an analytical conclusion.

Comment 2. A conclusion that C shares should provide some negotiating leverage is inconsistent with the conclusions that negotiating leverage may arise from B share allocations. To be consistent and provide negotiation leverage, C shares should be 10 percent.

Response: Under alternatives 3 and 4 (in which C share landings are not limited) the EIS asserts that C shares, at 3 percent, should provide some negotiating leverage to their holders (ES-13, and 4.6.3 *Captains and Crew*). No estimate of the extent of that leverage is provided, since a specific estimate cannot be reliably

determined and therefore would be speculative. Negotiating leverage from B share allocations is discussed in section 4.6 *Economic and socio-economic effects of the alternatives* and in Appendix 1. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 3. The effects of IPQ landing requirements on C shares are not fully acknowledged by the DEIS.

Response: The analysis in section 4.6.3 concludes that any negotiating leverage arising from the C share allocation will be “severely diminished” if those shares are subject to IPQ landing requirements after three years as is currently intended. As discussed in section 2.2 *Alternative 2 - Three-Pie Voluntary Cooperative Program*, on page 2-44, the Council will consider reversing its decision to subject C shares to the IPQ landing requirements three years after the implementation of the program.

Comment 4. The redistribution of wealth from captains and crew to the vessel owners is ignored or understated.

Response: NOAA Fisheries disagrees. This impact has been adequately addressed in the EIS. In section 4.6.3 on page 4-174, the EIS acknowledges anecdotal evidence that the compensation of captains and crew has declined in other rationalized fisheries and that similar declines could occur in this instance. The potential increase in resource rents (i.e., returns to vessel owners and processors) is also acknowledged in the section 4.6.2 *Economic efficiency in the harvesting and processing sectors*.

Comment 5. The DEIS overstates safety benefits.

Response: NOAA Fisheries disagrees. Improved vessel safety is one of the goals of the Program. As explained in section 4.6.9 *Effects on vessel safety*, the safety benefits provided by a rationalization program include improved opportunity for vessel owners to invest in safety, improved opportunity for captains to take weather conditions into account when making decisions, and more professional crews.

Response to Michael A.D. Stanley on behalf of Alaska Trojan Partnership

Comment 1. The eligibility for an initial QS allocation in a fishery should not depend exclusively on holding a license limitation program (LLP) license endorsed for that fishery. The F/V Alaska Trojan had substantial harvests in the Adak golden king crab fisheries and should receive quota share, although the vessel does not have a valid permanent LLP license endorsed for that fishery. The Council should consider modifying the Program to allow the Alaska Trojan Partnership to receive Adak golden king crab quota share (QS). The Council has made other exceptions to address incongruities or perceived unfairness in the Program.

Response: The exception referred to in the comment is the exception that would permit persons that purchased an LLP license, to use on an unqualified vessel to remain in a fishery, to receive a QS allocation based on the unqualified vessel that used the license after the transfer, rather than the vessel that created the

privilege to the license (see (Option 1) to 1.4.1 of the Council motion). The provision effectively permits the substitution of the history of an unqualified vessel for the history of a qualified vessel after transfer of the license to the unqualified vessel. The analysis on pages 215-218 of Appendix 1 deals with the allocation eligibility and page 217 has a discussion about speculative transfers. These analyses point out that the extension of this provision to transfers that occurred after Council selection of the provision might prevent speculative transfers of licenses (which did not occur for the purpose of remaining in the LLP fishery) but instead occurred to affect allocations under the program once the rules for allocations were known. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Response to Deep Sea Fishermen's Union

Comment 1. The processor share aspect of the preferred alternative violates anti-trust laws, is a serious policy mistake, and should be subject to close scrutiny. Even through current law prohibits processor shares for any fishery other than BSAI crab, this Program sets a precedent, legitimizes processor shares, and processor shares will be requested as a part of all rationalization plans.

Response: NOAA Fisheries contracted with private sector antitrust experts concerning the legality of the arbitration program. A legal opinion was produced that concludes that overall the arbitration can be implemented, but makes certain recommendations concerning the limitations on the sharing of information under the arbitration program. Although Congress mandated that the Secretary approve the Program as described in the Magnuson-Stevens Act, Congress provided the Council with the discretion to approve subsequent amendments to the Program prior to January 1, 2005. Under newly amended section 313(j)(1), the Secretary cannot amend the Program prior to January 1, 2005, unless the Council forwards a recommendation for a subsequent program amendment to the Secretary prior to January 1, 2005. At their June 2004 meeting, the Council considered this comment and the legal opinion and determined that a subsequent program amendment was warranted. The Final EIS was modified to include this change in the binding arbitration program. NOAA Fisheries will consider both this comment and the recommendations in the legal opinion in considering the Council's recommended change.

Section 804 of the Consolidated Appropriations Act of 2004 prohibits the Councils and the Secretary from considering or establishing any program to allocate or issue individual processing quota or processor shares in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands. NOAA Fisheries is unable to predict whether the Program will set a precedent for future rationalization plans.

Comment 2. A 70/30 A share/B share split would provide harvesters more bargaining power than the 90/10 split.

Response: NOAA Fisheries agrees and this point is discussed in section *3.16.2 Distributional consequences of rationalization*. in Appendix 1. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 3. The excessive share caps are set too high for processors and Community Development Quota groups, and should be reduced. The current excessive share caps would allow a level of fleet reduction that would negatively effect communities, skippers, and crew.

Response: The excessive share caps and the effects of fleet consolidation on communities, skippers, and crew are analyzed in sections 4.6.4 *Excessive shares, other fisheries, consumers, and environmental benefits* and 4.6 *Economic and socio-economic effects of the alternatives*. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 4. The application of the 90/10 A share/B share split to C shares will negatively impact the value and efficacy of C shares.

Response: NOAA Fisheries acknowledges the comment. The value and efficacy of C shares is analyzed in section 4.6.3 *Captains and crew*. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 5. The DEIS could be misinterpreted to suggest that the Council and Congress did not intend real benefits for skippers and crew, but the Council record and legislative history reflect the fact that the intent clearly was otherwise. The commenter also acknowledges the good intent of the Council and Congress in making the C share allocation.

Response: NOAA Fisheries agrees that the intent of the Council and Congress in creating C shares was to provide benefits for skippers and crew. The skipper and crew provisions analyzed in the EIS are exactly as recommended by the Council and mandated by Congress. The analysis in the EIS, in section 4.6.3 *Captains and Crew*, provides a balanced discussion of the potential effects of the Program as a whole, and the effects of the provisions created to benefit captains and crew. Additionally, the Council decided to review the C share portion of the Program 18 months after Program implementation to determine their effectiveness.

Response to Tom Suryan, Skippers for Equitable Access

Comment 1. The Council should examine the impacts of C shares on the distribution of landings 18 months after implementation of the program (as a second part of the analysis of the impacts of arbitration and individual processor quotas (IPQs)), which would be prior to the 3 years after implementation when the landing requirements of A shares would be imposed on 90 percent of C share IFQ.

Response: In developing the preferred alternative, the Council chose to impose A share landing requirements on C shares after three years to protect processor interests. Withholding the implementation of those landing requirements (together with permitting leasing of C shares) for the first three years was seen as a means of allowing flexibility to C share holders to determine their interests and participation patterns under the new management program. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

In June 2004, the Council recommended that the Program be amended to include an 18 month review of C shares. This change is reflected in the Final EIS.

Comment 2. The effects of costs of royalty fees paid for quota shares (both initial allocation and leased or purchased quota shares) and their impacts on the income of skippers and crew has not been adequately addressed in the DEIS. The DEIS analysis of effects on captain and crew should be expanded to include a discussion of the potential for royalty payments for IFQ (on allocated and purchased shares) to be deducted from revenues prior to computing captain and crew shares.

Response: NOAA Fisheries agrees. The analysis in section 4.6.3 *Captains and Crew* of the EIS includes an analysis of the impacts of captain and crew share provision. This analysis did not directly describe the impacts of royalty payments on those shares. The analysis in the Final EIS was expanded to include a direct discussion of the potential impacts of royalty payments on captain and crew shares. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Response to Kevin Suydam

Comment 1. Allow modifications to the Program that are corrective for social and economic reasons, but that do not change the intent of the Program.

Response: The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 2. The Council has not considered years subsequent to 2000 when determining the fishing history that will be credited for determining allocations under the Program.

Response: NOAA Fisheries disagrees. The Council and NOAA Fisheries did consider the most recent years (i.e., years after 2000) in developing the preferred alternative. The EIS analysis shows (to the extent possible with available data) the implications of using more recent years for determining allocations (see pp. 221-240 of Appendix 1 to the EIS). The Council and NOAA Fisheries, however, selected a preferred alternative for the DEIS that would not credit those years in making QS allocations.

Comment 3. The cyclicity of crab stocks justifies the consideration of the most recent years fishing history, because future stocks could generate quotas that are more similar to those most recent years.

Response: The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 4. The preferred alternative, by crediting all years of history (rather than allowing participants to drop their worst year), discriminates against most participants in the golden king crab fisheries in favor of vessels that will receive larger allocations.

Response: The analysis in Appendix 1, on pages 233-239, shows that allowing participants to drop their worst year would slightly raise the median allocation but slightly decrease the allocations to the participants with consistent participation. Conversely, not allowing participants to drop their worst year advantages participants with the most consistent participation. The Council and NOAA Fisheries considered this information in developing the preferred alternative when it decided to not allow participants to drop their worst year. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 5. Processor shares will have negative impacts on price competition and the community and regional landing requirements will have negative impacts on financial returns from the fisheries.

Response: The EIS analyzes both of these issues in section 4.6.2 *Economic efficiency in the harvesting and processing sectors*, noting both the effects on price competition and the distribution of benefits between the sectors of IPQs and community and regional landing requirements. The EIS also notes the impacts of the different alternatives (including these provisions) on community interests. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Response to Mundt MacGregor LLP on behalf of the City of Kodiak, Alaska

Comment 1. The DEIS does not adequately address the impacts of the preferred alternative on the City of Kodiak. Because the agency has omitted critical information from the DEIS, the DEIS does not provide meaningful analysis of expected or possible quantitative community impacts and the public is unable to adequately comprehend the likely economic impacts of crab rationalization on affected communities. The analysis should provide quantitative estimates of those impacts.

Response: NOAA Fisheries disagrees. An analysis of community impacts with respect to Kodiak is contained in several sections of the document, most importantly the Social Impact Assessment that is Appendix 3 to the EIS. Quantitative estimates of the impacts to Kodiak cannot be provided beyond that provided in the EIS because data specific to Kodiak must be aggregated with data from other communities because of governing confidentiality provisions.

Comment 2. The commenter expresses support for extensive reviews of the Program after implementation.

Response: The preferred alternative includes annual reports concerning the Program, as well as a more in-depth review after three years, and a comprehensive review after 5 years. The program to collect comprehensive economic data on the fisheries, which is also included in the preferred alternative, should improve the quality of information available for those reports and reviews. NOAA Fisheries acknowledges the comment and supports the Council's intent to examine the effects of the crab rationalization program after implementation.

Comment 3. The allocation of PQS and IPQs and the qualifying years selected for the initial allocation of PQS disadvantage the City of Kodiak. The Council should consider other community protection measures that might better advance the interests of the City of Kodiak.

Response: The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 4. The community protection measures contained in the preferred alternative will actually work to the disadvantage of communities like Kodiak. Kodiak would be better off if it was not limited by community protections that prevent it from competing for processing that is allocated to other communities. The North Gulf of Alaska right of first refusal is the only community protection measure that might benefit Kodiak. Additionally, the lack of information in the DEIS as to whether Kodiak qualifies for that protection makes it extremely difficult for Kodiak to make accurate predictions or submit meaningful comments on the social and economic impacts of the preferred alternative.

Response: The Social Impact Assessment in Appendix 3 acknowledges that some protections may disadvantage Kodiak to the benefit of other communities. In response to concerns raised in the comment and other implementation issues, the agency worked with qualified processors and the State of Alaska to pursue an exception to State policy that would allow the agency to disclose the names of communities that appear to qualify for the right of first refusal. Eligible communities for the community protection measures would be those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has preliminarily determined that the eligible crab communities are as follows: Adak, Akutan, Dutch Harbor, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moeller. However, Adak is not eligible for the right of first refusal provision.

Comment 5. The EIS should have analyzed, as a reasonable alternative, a “Modified One-Pie Alternative,” which would allocate a portion of the harvest share allocation to eligible processors.

Response: NOAA Fisheries disagrees. Under NEPA, an alternative is properly excluded from consideration in an EIS only if it would be reasonable to conclude that the alternative does not bring about the ends stated in the purpose and need. NEPA does not require detailed analysis of alternatives that do not accomplish the purpose of an action, i.e. alternatives that are too remote, speculative, impracticable, or ineffective. However, a reasonable explanation must be included in the EIS as to why those alternatives were eliminated from further study.

As discussed in section 2.6 *Alternatives considered and eliminated for detailed study*, the Council and NOAA Fisheries specifically excluded this alternative from analysis because the alternative is inconsistent with the problem statement and the purpose and need for the action. The allocation of harvest shares to the processing sector, many of whom do not directly participate in harvesting, would not equitably allocate interests to processing sector participants. The allocation of a portion of the harvest quota to the processing sector would diminish allocation of harvesting to harvest sector participants, jeopardizing stability to participants in that sector. In addition, the harvest allocation to processors would, by necessity, be inadequate to support historic

processing levels since the total allocation of harvesting would be divided between the two sectors. Also, the allocation of harvest shares to processors would not protect processing interests and investments in processing equipment since that allocation does not directly protect or support ongoing processing activity. Section 2.6 was augmented in the Final EIS to include this discussion.

Response to Mundt MacGregor LLP on behalf of Pacific Star Fisheries, LLC

Comment 1. The tables appearing in Appendix 2-1 of Appendix 1 of the DEIS do not include the participation of the F/V Seawind. These tables show the estimated number of qualified vessels participating in each fishery in each year. The tables showing participation in the eastern Aleutian Islands (EAI) golden king crab fishery on page 9 of that Appendix show no qualified catcher/processor participation in the years 1996-7, 1997-8, and 1998-9. The F/V Seawind participated in the EAI golden king crab fishery in 1997 and 1998 and its history should be qualified for an allocation.

Response: On page 220 of Appendix 1, the method for estimating qualification in the analysis is described in detail. That methodology is intentionally under-inclusive and could exclude qualified participation by the F/V Seawind, particularly if the vessel was not used to meet all requirements (General Qualifying Period, Endorsement Qualifying Period, Recent Participation Period) for LLP license qualification. Table 2-2-7 of Appendix 2-2 to Appendix 1 of the EIS shows catcher/processor participation in the EAI golden king crab fishery for the years in question, which could include the F/V Seawind. In the event that participation of the F/V Seawind meets the requirements of the program for eligibility and qualified history, an initial allocation of QS would be made based on that history, regardless of whether the EIS analysis concluded that the F/V Seawind was a qualified vessel.

Response to David Fraser

Comment 1. The EIS is not a decision-making document because the U.S. Congress amended the Magnuson-Stevens Act to mandate the Secretary of Commerce to implement the Program, which is Alternative 2 in the DEIS. The Executive Summary should begin with a disclaimer notifying the public that the ‘decision makers’ have acted prior to the release of this EIS to the public and that there are no choices to be made amongst the four alternatives.

Response: NOAA Fisheries disagrees with the comment, however, we will revise the Executive Summary to include a discussion of the Magnuson-Stevens Act amendment mandating the Program. The fact that Congress mandated one alternative does not negate the need to analyze a reasonable range of alternatives in a comparative form in an EIS. The EIS remains a decision making document, as the Magnuson-Stevens Act amendment provides the Council with latitude to amend the Program and change management in the fisheries. Additionally, NEPA does not prohibit the analysis and consideration of alternatives that would require statutory changes.

Comment 2. The Executive Summary should make explicit what decisions can be made based upon this document and whether any of the suboptions relative to alternative 2 and contained in the appendices are ‘live’ decision points.

Response: The ability of the Council to make changes to the Program depends on the Magnuson-Stevens Act amendment and the EIS analysis. Any amendments to the legislated Program that are to be approved by January 1, 2005, must be consistent with Congressional intent. Additionally, the breadth of analysis in the EIS and the extent to which potential amendments are addressed in the EIS will determine the amendments that can be approved by the Council and the Secretary prior to January 1, 2005. Subsequent program amendments that are not analyzed in the DEIS may be recommended by the Council for approval by the Secretary subsequent to implementation of the Program. A firm list of Program provisions that may be amended cannot be enumerated because the nature of those amendments will determine whether the EIS analysis and Magnuson-Stevens Act amendment can support those changes. Such a decision must be made on a case-by-case basis.

Comment 3. Include a discussion of the Sec. 801 Crab Rationalization legislation in Chapter 1: Purpose and Need.

Response: Chapter 1 of the EIS does reference this law in section *1.8 Relationship of this action to other federal law and action*, on page 1-22, with a more complete description on page 1-25. The legislation the comment refers to is the amendment to section 313 of the Magnuson-Stevens Act.

Comment 4. The following statements on page 2-35 are inaccurate: ‘Since limiting access to processing activity is currently not authorized under the Magnuson-Stevens Act, it can not be a component of the FMP. However, Congress may decide the authorize limiting access to processing through processor quota shares.’

Response: NOAA Fisheries agrees and will delete these sentences in the Final EIS.

Comment 5. The treatment of binding arbitration in the analysis is inadequate for a feature of the program that is so critical and raises anti-trust concerns. The analysis of the binding arbitration in section 4.6.7.3 *Binding Arbitration* must be enhanced to deal with questions of legality, efficacy, and functionality.

Response: NOAA Fisheries disagrees. The EIS analysis, including the analyses in Appendix 1, of the binding arbitration component of the program is adequate for decision-making. Further response to comment 5 is contained in the responses below to comments 6, 7, and 8.

Comment 6. Section 4.6.7.3 should address the issue of the legal risks to harvesters as identified in the Department of Justice (DOJ) letter, and how that will undermine the credibility of the threat provided by binding arbitration.

Response: According to the legal opinion referenced in response to comment from the Deep Sea Fishermen’s Union, "members of a cooperative established pursuant to the Fishermen's Cooperative Marketing Act (FCMA) may freely exchange information, agree among themselves on the price they will accept for their products, bargain jointly and agree on the basis for negotiations without risking antitrust liability. However,

if the cooperative or members of the cooperative share sensitive competitive information or attempt to collaborate with non-member harvesters on any issues related to price or costs, they would risk antitrust liability." (Opinion, at page 29). The opinion recommends that non-member harvesters should be prohibited from participating collectively with cooperative members during the arbitration procedures. However, the opinion also states that non-member harvesters could be permitted to participate in arbitration procedures with cooperative members and a single processor without posing a serious arbitration risk as long as the non-member submits an independent bid and only has access to information it and the processor submit to the arbitrator. NOAA Fisheries disagrees that the analysis in section 4.6.7.3 should be modified to include this issue.

Comment 7. The EIS should provide additional clarity on whether the issues raised in the DOJ letter of August 27, 2003 will impact the intended function of binding arbitration as a surrogate for competition in price formation.

Response: NOAA Fisheries disagrees with the comment. Several objectives are intended to be served by the Program, some of which conflict with the provisions of an unfettered market system. Advocates of a free, competitive market are likely to find some of the restrictions on markets repugnant.

The arbitration system is intended to arrive at a fair ex-vessel price for landings, which will be based on historic pricing. Nowhere is it suggested that the arbitration system would arrive at the same price as a competitive market. In fact, the use of a competitive price as the arbitration standard was purposefully rejected because it is unwieldy. The use of a standard that is based on historic pricing is much less subject to manipulation and error than an abstract standard, such as a "competitive price". Well-drafted regulations should specify a workable procedure for participants in the fishery that wish to avail themselves of the arbitration program. The use of a market report and two separate proceedings (a non-binding proceeding followed by a binding proceeding) should reduce error and minimize manipulation of the arbitration proceedings. The joint selection of market analyst/arbitrator(s) should also limit manipulation of the system.

Comment 8. The discussion in section 4.6.7.3 should clarify that the legislation does not create antitrust waivers and limits the ability of the Council to modify the binding arbitration program, such as replacing the legislated arbitration system with the "Steele Amendment".

Response: The commenter is correct that the Magnuson-Stevens Act at 313(j)(6) does not include a waiver of the antitrust laws of the United States (the reader is referred to EIS Appendix 2 for the complete statute). However, NOAA Fisheries disagrees with the comment that the Council is limited in its ability to modify the binding arbitration program. The Magnuson-Stevens Act section 313(j) specifically permits the Council to approve amendments to the program both before and after implementation (the reader is referred to *The Role of Public Comment*, in the introduction). While amendments will require adherence to standard regulatory procedures, the definition of the "Steele amendment" and the previous analysis of that system in the existing analysis will provide for a relatively expeditious amendment process in the event that the Council decides that amendment is necessary and that the "Steele amendment" is the appropriate solution to existing problems. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 9. The DEIS should provide additional clarity on whether the Mandatory Data Collection program can be fully implemented given that Sec. 801 (j)(2) only waived Magnuson-Stevens Act restrictions. Additionally, the EIS should discuss the interface between the binding arbitration program and the mandatory data collection program.

Response: NOAA Fisheries agrees that it is critical to the functioning of binding arbitration that the arbitrator have access to relevant, verifiable data. Section 313(j) and the Program provide for arbitrator access to economic data collected by an independent third party data collection agent for purposes of verifying accuracy of data submitted to arbitrators by arbitration parties. Given this authority, NOAA Fisheries is unaware of any other laws, federal or otherwise, that would prohibit the collection of economic data for the purposes set forth in the Program, including the use of economic data for particular purposes in the binding arbitration. NOAA Fisheries revised in the Final EIS in section 4.6.7.5 to reflect this response.

Appendix 1 of the EIS provides a brief description of the use of data collected in the data collection program for verification of data used in arbitration. Under that system, the arbitrator would communicate with the data collection agency, with the data collection agency notifying the arbitrator of any erroneous data that was submitted in an arbitration proceeding.

Comment 10. Requests that the Council consider alternatives to the arbitration program, such as a 50/50 A/B share split, to mitigate for the loss of a competitive market under the program.

Response: The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 11. Requests the Secretary to reconsider the provision that sets QS/IFQ use caps for processors.

Response: The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 12. Requests the Secretary and Council to reconsider the provision that sets PQS/IPQ use caps for processors.

Response: The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 13. Requests the Secretary and Council to reconsider the level of allocation of Class A IFQ and IPQs.

Response: The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 14. The DEIS does not serve the purposes of NEPA. Further, this DEIS affirms NEPA as a process that does not require substance.

Response: NOAA Fisheries disagrees. NEPA establishes a process by which federal agencies must study the effects of proposed federal actions on the human environment. The EIS does serve the purposes of NEPA by following the process established in NEPA. The EIS studies, in detail, the effects of the proposed action, and alternatives to the proposed action, on the human environment.

Response to Testimony of David Fraser, the attachment to his public comment

Comment 1. The commenter expresses his opposition to IPQs and his opinion that the 10 percent B share allocation and binding arbitration program are insufficient to ensure a fair price for harvester deliveries and that the community protection provisions are not adequate to protect community interests.

Response: NOAA Fisheries is aware of the extensive comments in opposition to the processor quota share provisions in the Program. Congress mandated that the Secretary approve the Program as described in the Magnuson-Stevens Act. While Congress provided the Council with the discretion to approve subsequent amendments to the Program prior to January 1, 2005, the Secretary cannot amend the Program prior to January 1, 2005, unless the Council forwards a recommendation for a subsequent program amendment prior to January 1, 2005. The Council and NOAA Fisheries have considered this comment but the Council determined that a subsequent amendment to change the Program in response to this comment is not warranted.

Comment 2. The purpose of processor quota share is to address transitional costs associated with non-malleable capital in the processing sector. The commenter questions the adequacy of the analysis of the processor allocation, contending that the analysis should determine the level and duration of PQS allocation necessary to compensate processors for transitional effects (p. 11).

Response: NOAA Fisheries disagrees with the comment. The Council intends that processor QS provide stability to the processing sector and communities. Although the Council may choose to request from staff an analysis of the adequacy of processor shares for addressing transitional impacts, that analysis is beyond the scope of the EIS, which is limited to analysis of the identified alternatives.

Response to Margaret Hall, Rondy's, Inc.

Comment 1. The commenter expresses concern over the decision making process for the Program and the EIS process.

Response: In June 2002, the Council defined a proposed action and a preferred alternative for a program to rationalize the BSAI crab fisheries. Section 1.4 *Public Participation* explains the Council's process in developing the EIS alternatives. The DEIS was developed after the Council defined the range of alternatives to be analyzed. The Preliminary Draft EIS was released in November 2003. The Council reviewed the Preliminary Draft EIS and received public comments on it in February 2004. At that meeting, the Council recommended revisions to the DEIS and determined that the revised document should be released for public review and comment. The DEIS was released for public comment on March 19, 2004.

The Magnuson-Stevens Act was amended by the Consolidated Appropriations Act of 2004 (Appropriations Act) such that the Secretary of Commerce must approve the Program by January 1, 2005, as it was approved

by the Council between June 2002 and April 2003, including all trailing amendments that were adopted by the Council prior to the passage of the Appropriations Act. 16 U.S.C. 1862(j)(1); MSA section 313(j)(1). Although Congress mandated that the Secretary approve the Program as described in the Magnuson-Stevens Act, Congress provided the Council with the discretion to approve subsequent amendments to the Program prior to January 1, 2005. Under newly amended section 313(j)(1), the Secretary cannot amend the Program prior to January 1, 2005, unless the Council forwards a recommendation for a subsequent program amendment to the Secretary prior to January 1, 2005.

Comment 2. The DEIS does not adequately analyze problems with the Program, which should, in turn, be corrected by the Council. Specifically, the DEIS does not adequately address the problems of the binding arbitration component of the program.

Response: NOAA Fisheries disagrees with both the general comment and the specific comment concerning the arbitration program analysis. The EIS adequately discusses the economic impacts of each component of the alternatives on the human environment, both in section 4.6 *Economic and socio-economic effects of the alternatives* and in Appendix 1 (see section 3.7 of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis). Further, the opinion letter from the U.S. Department of Justice and related correspondence are contained in Appendix 2 of the EIS. The analysis in the EIS examines the economic and environmental impacts arising from the totality of the management program proposed for the crab fisheries (including the binding arbitration system in the context of that management program) and provides a sufficient analysis for the Council and Secretary of Commerce to make decisions on the design and implementation of the crab management program (including the binding arbitration component of the program).

The commenter does not express any specific concerns with the arbitration program or its analysis, but expresses a general concern that the arbitration program is based on a Canadian system that is claimed to have proven dysfunctional. The analysis points out that the Canadian arbitration system is one aspect of management of those fisheries and many of the problems that contributed to any breakdown of the system predate the introduction of that arbitration program in the Canadian fisheries (p. 376 of Appendix 1). Likewise, the binding arbitration component is one aspect of the Program. Furthermore, the management program proposed for the BSAI crab fisheries differs in many respects from the Canadian system. The comment did not specify additional problems with the Program, however, the agency is confident that the EIS analysis is sufficient for decision making on all aspects of the Program. As such, the EIS meets the goals of NEPA in providing adequate analysis of the effects of the alternatives to decision makers and the public.

Comment 3. The DEIS does not study an adequate range of alternatives.

Response: NOAA Fisheries disagrees. The EIS examines a reasonable range of alternatives for the action of rationalizing the BSAI crab fisheries. Although the commenter did not identify any specific alternatives that would be adequate economic and environmental alternatives but that were not analyzed in the EIS, NOAA Fisheries received other comments concerning the alternatives analyzed in the EIS. The reader is referred to the response to comment 4 from Mundt MacGregor on behalf of the City of Kodiak.

Comment 4. The Program runs counter to the grain of appropriate management philosophy. There are just too many red flags in this program.

Response: The preferred alternative is intended to address the issues raised in the problem statement, including resource conservation, bycatch and associated mortalities, excess harvesting and processing capacity, lack of economic stability for harvesters, processors, and coastal communities, and high level of occupational loss of life and injury. The analysis in its entirety shows the relationship of the preferred alternative to these objectives.

Response to Tamara Shrader/David Whitmire

Comment 1. The commenter expresses concern over the “trickle down consequences” of processor quota shares in the crab fisheries on other fisheries (such as the halibut fishery).

Response: Section 804 of the Consolidated Appropriations Act of 2004 prohibits the Councils and the Secretary from considering or establishing any program to allocate or issue individual processing quota or processor shares in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands. NOAA Fisheries is unable to predict whether the Program will set a precedent for future rationalization plans.

Comment 2. The commenter expresses concern over consolidation of processor quota shares and asks how consolidation will be prevented under the Program.

Response: Some consolidation in processing is permitted by the preferred alternative. The preferred alternative, however, limits any processor to holding no more than 30 percent of the processing shares in any fishery and to holding no more than 60 percent of the processing shares in the North region in the *C. opilio* fishery. A discussion of those limitations on excessive processor share holdings is contained in section 4.6.4.1 *Excessive shares in the fisheries* of the EIS.

Response to Judith Leckrone Lee, Environmental Protection Agency

Comment 1. The EPA supports the monitoring and data collection safeguards proposed in the preferred alternative.

Response: NOAA Fisheries acknowledges the comment.

Comment 2. EPA assigned the rating of LO (lack of objections) to the DEIS.

Response: NOAA Fisheries acknowledges EPA’s rating.

Response to Phyllis A. Swetzof, City of Saint Paul

Comment 1. The DEIS analysis and conclusions are consistent with the Council’s problem statement and support the preferred alternative.

Response: NOAA Fisheries acknowledges the comment.

Comment 2. The DEIS addresses many of the issues raised by the commenter on the Preliminary Draft EIS (November 2003). Specifically, the DEIS includes the Social Impact Assessment in the appendix, provides a clearer distinction between the types of fisheries-dependent communities, includes more detail on how low crab abundance levels impact economic behavior, defines ‘efficiency,’ and differentiates between short-term and long term impacts.

Response: NOAA Fisheries acknowledges the comment.

Comment 3. The DEIS neglects to include a discussion of the benefits of the regionalization components. Specifically, regionalization improves harvester efficiency by providing markets closer to the grounds and improves resource management and utilization by limiting on-board deadloss.

Response: NOAA Fisheries disagrees. The comment is incorrect in arguing that restrictions on the mobility of activity caused by regionalization and community protections will increase efficiency beyond that which would be realized in the absence of those restrictions. The absence of the requirement of a buyer in the North region in the IFQ program will not decrease efficiency. If crab that is required to be delivered to the North region has value in production, it will be purchased and processed. If it does not have value in production, the absence of a North region purchaser will increase efficiency, since production would be at a loss. Since this second scenario is very unlikely, it is not discussed in the EIS.

Comment 4. The DEIS can be finalized without any further analysis of the vessel buyback program because it is difficult to assess it’s likely impacts.

Response: NOAA Fisheries agrees, however, the Final EIS was updated to include the most recent information on the buyback.

Comment 5. Due to the development of the B-share market, it is likely that the analysis in the DEIS understates harvester benefits and overstates eligible processor benefits of the harvester B-share component of the Program.

Response: The analysis, in section 4.6.2 *Economic efficiency in the harvesting and processing sectors*, of harvester efficiency (p. 4-157 to p. 4-162) and processor efficiency (p. 4-167 to p. 4-168) fully and accurately describes the potential benefits to harvesters and processors of the B share allocation, including the development of a market for B share deliveries to processors. The analysis points out that harvesters are likely to realize a greater portion of the resource rents on landings of B share crab than on landings of A share crab.

Comment 6. The DEIS analysis, from a community perspective, points out the flaws in the IFQ alternative, specifically, that processors may not be able to realize normal profits during the transition, and that there will be significant consolidation in the processing sector.

Response: NOAA Fisheries acknowledges the comment.

8.2 Public Comments

The Draft EIS attracted a total of 16 letters of public comments. Each submission was a detailed substantive letter with a number of specific comments. All letters are included in this section in the order of receipt. Each comment in each letter is summarized and responded to individually in the section *Response to Comments*.

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**Comments of the
North Pacific Crab Association
On the
Draft Environmental Impact Statement for the
Bering Sea and Aleutian Islands Crab Fisheries
March 2004**

The North Pacific Crab Association represents the following companies that are active buyers of Bering Sea crab:

Alyeska Seafoods	Trident Seafoods
Icicle Seafoods	UniSea Inc
NorQuest Seafoods	Westward Seafoods
Peter Pan Seafoods	Yardarm Knot
Snopac Products	

Our Association offers the following comments on the Draft EIS for the BSAI crab fisheries.

Summary:

The EIS supports the North Pacific Fishery Management Council (NPFMC or Council) decision to select the “voluntary three-pie cooperative” alternative as the preferred alternative to rationalize the BSAI crab fisheries. The Council’s statement of the problems facing the crab fishery and its participants, and the goals sought in addressing those problems, can be addressed only by selecting the preferred alternative.

The EIS makes it clear that the safety and conservation benefits of rationalization, which are significant and have been the primary justification for the efforts to rationalize the crab fisheries, can be achieved with any of the three alternatives to the status quo. However, both the IFQ only alternative and the Mandatory Cooperative alternative will cause significant and unnecessary economic harm to current participants and communities that are dependent upon Bering Sea crab. In contrast, the preferred alternative provides a system of rationalization in which the economic benefits of the fishery will grow (compared to the status quo) while benefiting all sectors, including vessel owners, fishermen, processing companies and communities.

We support the analysis in the EIS, believe it is adequate and a reasonable basis for the Council and the Secretary to select the preferred alternative to rationalize the fishery.

Specific Comments:

The National Marine Fisheries Service provided the public and the Council with a Preliminary Draft EIS for consideration at the February 2004 meeting of the North Pacific Fishery Management Council. Our association’s comments on the Preliminary

Draft EIS included two main points, each of which have been incorporated in the Draft EIS:

First, we asked that the EIS take into consideration the effect of each alternative on current participants (in the “short term”) and not just the “long term” effects. The Draft EIS now includes consideration of these effects, helping the reader and the decision maker to understand the impact on those currently invested in the fisheries. The changes that have been made are exclusively in the detailed text, while the executive summary and summary tables appear to present primarily the conclusions in the longer-term equilibrium. For example, in Chapter 4, page 4-166, the analysis explicitly recognizes the transition impacts, while the Table at 4.6-6 does not, nor does the Executive Summary note this important impact. There are also places in the text where this distinction could have been drawn clearer than it has been. Having said that, the detailed analysis is sufficient for the reader, the Council and the agencies to conclude that the Preferred Alternative is the only alternative available that addresses the impacts on current participants by moving to a rationalized fishing regime.

Second, we asked that the concept of “efficiency” be clearly defined and that it be applied uniformly to both the processing and harvesting sectors. We appreciate the changes that have been made in this Draft to address those issues. This approach allows the decision makers to properly distinguish between the issues of whether there is a “net national benefit” to rationalizing the fishery (there is) and the distributional impact of the system chosen to implement the new system (which will vary among the three alternatives available).

Our Association provided specific “technical” comments to the EIS upon review of the Preliminary Draft EIS, some of which were incorporated in the Draft EIS prior to release for review and some of which were not. Those comments that were not incorporated which we believe should be addressed are attached as Appendix A.

Analysis:

Fundamental goals sought by the Council in rationalizing the fishery include conserving the resource and rebuilding depressed stocks, and creating a safer fishery by eliminating the race for crab that we have in the current derby fishery. Each of the three alternatives available to rationalize the fishery has the tools to achieve those goals. There is no significant difference among the alternatives with respect to these goals.

The alternatives differ primarily when considering the economic and social impacts on fishery participants, particularly those that are currently invested in the Bering Sea crab fishery. The EIS recognizes the differences in the alternatives with respect to the effect on current participants. It is clear that the distribution of the social and economic benefits that will be achieved by rationalization differ depending on the alternative chosen.

Our association wishes therefore to highlight the specific reasons the Council selected the Preferred Alternative over other options to rationalize the fishery. These reasons (set out specifically at page ES-4 of the Executive Summary) include the following factors:

- The Preferred Alternative “strikes a balance of the interests of several identifiable groups that depend on these (crab) fisheries”.
- This Alternative fits “the specific dynamics and needs of the BSAI crab fisheries”.
- The program is intended to “increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in both harvesting and processing sectors”.
- Communities receive unique protections from the Preferred Alternative and it also includes an increased CDQ allocation and regional landing requirements.

The preferred alternative is the only alternative that avoids potential significant negative environmental justice effects, and is therefore the most likely to comply with E.O. 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations).

In short, the Council has crafted a program that recognizes all of those with significant investments in the Bering Sea crab fishery. It recognizes that a failure to do so would result in significant losses during the transition to a new fishery model on the part of those that were excluded from the new system.

The other two alternatives do not achieve this balance sought by the Council.

The IFQ only alternative (Alternative 3 in the EIS) ignores the importance of processing quota for Bering Sea communities that are processing dependent. Community protection measures found in the preferred alternative are omitted from the IFQ alternative (4-203: “From the community...perspective, there are fewer controls on consolidation under the IFQ alternative than under the three-pie alternative...there are no community protection measures...no caps on ownership of either harvesting or processing capacity.”) Current processing investments are devaluated as the value of the fishery is transferred to the holders of fishing quota. (4-166: “During transitions, most importantly on implementation of the program, processing efficiency could decline substantially...with some processors being unable to compete and being forced to drop out of the fishery altogether.”) The lack of community protection measures can result in significant negative impacts on communities with a high percentage of Alaska native minorities, raising environmental justice concerns. (See the text at 4-267)

The Cooperative Alternative (Alternative 4 in the EIS) is dysfunctional, forcing relationships that have not historically existed by requiring all crab of a harvester to be delivered to a single processor (based on where a majority of its crab deliveries). Smaller processors would likely be eliminated. There are no protections for crab dependent communities, not even a “regionalization component”. (4-203: “Without a north region protection, all processing could exit the Pribilof communities...this would be a severe

blow to the economy of these communities) This Alternative also ignores the Western Region for Aleutian Islands brown crab that is in the preferred alternative. (4-204: this “would be a significant setback for attempts to foster economic growth based on fisheries in the emerging community of Adak.”) The lack of community protection measures can result in significant negative impacts on communities with a high percentage of Alaska native minorities, raising environmental justice concerns. (See the text at 4-267)

Each of the alternatives to rationalize the fishery will, in the long run, achieve a net benefit to the nation through increased efficiency and economic returns, a safer fishery, with significant conservation benefits compared to the status quo. Each of the alternatives will have a low impact on the environment compared to the status quo. Only the preferred alternative has a structure that ensures processors will be able to slow processing activities, and for that reason it provides the best opportunity for processors to achieve higher yields and therefore reduced waste discharge.

With respect to the economic effects of the alternatives, the EIS focuses on efficiency as the primary measure of economic benefit. However, the Council, as mandated by law, is required to consider more than just “efficiency” in making its decision. P.L No. 106-554 (The Consolidated Appropriations Act of 2001) required the Council to “analyze individual fishing quotas, processor quotas, cooperatives and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets.” The consideration of the effects on processors and communities are not at the expense of the fishing fleet, but are to be balanced with the needs of vessels owners and operators.

If the goal of the Agency (or the charge by Congress) were to promote pure “economic efficiency”, then the rationalization system of choice would not include consideration of existing investors such as vessel owners, processors, or communities. Nor would existing fishing captains and crew be considered. Instead, the Council would likely recommend a system under which the cost of catching and processing would be minimized regardless of social impact and at all cost. There would be no control over consolidation, and no consideration of the effects of the program on existing participants. The effect on communities with significant crab dependent investments would be ignored in the name of economic efficiency. Initial issuance of quota, and subsequent use and transfer, would be without restraint so that the market could achieve “maximum efficiency”.

The Council of course did not recommend this type of approach, nor did Congress intend it to do so. Instead, in response to the congressional mandate, the Council recommended a system designed to balance the interests of communities and of the harvesting and processing sectors that are current investors in the fishery. There will be a significant improvement in net economic benefits to the nation. Those benefits will be shared by all sectors.

Conclusion:

At its June 2004 meeting, the Council should reaffirm its decision in June 2002, including its actions since then on the trailing amendments, that the preferred alternative to rationalize the BSAI crab fisheries is Alternative 2, the “Three-Pie Voluntary Cooperative”.

Appendix A to NPCA Comments on BSAI Crab DEIS (March 2004)

Environmental Impact Statement (EIS)

Executive Summary

Pg ES-3. Alternative 2. The description of the Three-Pie Voluntary Cooperative alternative to rationalize the fishery could be clearer if it was explicit that the cooperatives contemplated are “multi-species”, with 90% of the history of the harvester, all species considered, assigned to the cooperative that harvester is eligible to join. It should also be made clear that the harvester would join a cooperative and associate with a processor based upon where a majority of its crab was delivered in the year prior to implementation, not based upon historical delivery patterns. The text does not mention the basis upon which a harvester may change cooperatives, an important point to understand the balance of power between the harvester and the processor. These points are important for the reader to understand the implications for harvesters and processors that may wish to engage in cooperative activities.

ES-5. Changes to fleet composition. The EIS should at least make note of the fact that a vessel buyback program is available, even though the effects may not yet be known. See table 4.9-17, page 4-373.

ES-8 and ES-14. The executive summary states that harvester and processor efficiency might be negatively impacted by regional landing requirements and potentially by other community protection measures. While that may be the effect of those provisions, it could be argued that requiring processing in the northern region, the western region (for Western Aleutians brown crab) or even specific communities (as required in the cool down period) will enhance harvester efficiency by providing landing opportunities more proximate to the fishing grounds. Alternatives without those requirements may result in harvesters incurring higher operating costs. Alternatives without the regional landing requirement (the status quo and the cooperative alternative) may not provide a mechanism to reward the harvester with higher revenues to compensate for the higher costs incurred (since there is no binding arbitration to resolve ex-vessel prices in those alternatives). The harvesters could react to the higher costs of running long distances by electing to concentrate fishing effort in areas near processing locations, with the potential effect of localized depletion and higher handling mortalities. The EIS would benefit from a discussion of this possibility.

Pg ES-9. Table ES-2. Information in row 1 is repeated in row 2. Information on harvester efficiency missing.

Pg ES-9 to ES-12. Table ES-2 does not distinguish between short and long term impacts on efficiency (harvester, processor, and production).

Pg ES-14. Effects on processing efficiency. In the long term, processing efficiency may improve. However, in the short term or transition period processor costs could increase.

This could happen for several reasons. First, the elongated season may increase sunk costs that are time dependent. Second, the start up and shut down costs that are incurred each time you start up or shut down processing will increase as start and stops occur more frequently under rationalization, compared to the status quo. Third, requiring operations in particular regions and communities may result in a return to operation of some facilities that are not currently operated.

Chapter 1. Purpose and need.

Pg 1-6. The term “economic efficiency” is used once in this chapter and is not defined. In other parts of this chapter, the terms “harvester”, “processor”, and “production” are used and defined. In section 4.6.2 (Pg 4-153) “economic efficiency” is distinguished from “production efficiency”. It would be helpful to define all these terms in one place and clarify the relationships between the terms.

Pg 1-18. It would be helpful to define “revenues” and “cost” so that it is clear to all readers. “Costs” for a processor could mean variable costs, operating costs, raw fish costs, fixed costs, sunk costs, capital costs or a mix of these terms of art. “Revenues” likewise should be specifically defined.

Pg 1-19. In the section describing processing capacity, the following statement is made: “The current crab processing capacity is designed to process crab quickly at the end of seasons when the entire fleet offloads its catch.” That statement is not entirely accurate, although we agree the capacity has that result as well. In fact, the current capacity is designed to engage in the race for crab, developed over time when larger quotas justified high capacities. Some of the capacity developed in response to the high quotas is not in current use, but what is used is deployed to increase the share of the processor. Deadloss is a factor, but certainly not the only factor, that helps describe the current capacity of the processing sector. Also see Table 4.9-17, alt 1, Pg 4-375.

Pg 1-20. Spillover effects on harvesters. The document here (and later when describing the effects of the intended action) speaks only to the issue of crab harvest capacity used in other fisheries. It does not consider the effect on other fishermen if processing capacity is lost due to the alternative selected. For example, halibut fishermen from St. Paul and St. George depend upon a crab processing plant to process their halibut. That plant may be idled under certain alternatives (e.g., the IFQ or cooperative alternatives). Similarly, some salmon and herring fishermen depend upon plants with crab as part of their operation (floating processors specifically). The preferred alternative may be the only alternative that will encourage the continued operation of those facilities. If they do not continue to operate, these other fishermen (and communities) might suffer for it.

Pg 1-21. Safety. Although not well documented, a rationalized fishery should provide a safer work environment for processor workers. In the status quo, processing occurs on a round the clock basis, with virtually no days off for the workers until the season ends. Typically extensive overtime is required of the workers. This may contribute to work related injuries. Rationalization, particularly if processors have some influence over

delivery timing, should provide for a more reasonable work schedule. Additionally, as the document notes elsewhere, the processor workforce will likely become a more professional group under rationalization, better trained and skilled. The combination of a better work group and reasonable work hours should reduce work related injuries. The EIS should include a discussion of this potential benefit.

Chapter 2. Alternatives

Pg 2-46. The EIS states that PQ is transferable subject only to ownership and use caps. There are also potential limitations from existing anti-trust laws (that would limit the degree of consolidation that would be allowed) and transfer is also subject to a community right of first refusal option.

Pg 2-83. Table 2.5-2 states that there are no caps on share use for processors under the status quo. The text describing the status quo (page 2-3 to page 2-39) does not discuss this. It may be worth noting in the text that under the status quo AFA qualified processors are capped at their historical share of crab, and that existing anti-trust laws will prevent the formation of a “monopoly” (i.e., that is the excessive share cap that exists in current law).

Chapter 3: Description of the affected environment

Pg 3-112 to 3-117. The description of crab waste discharge at pages 3-112 to 3-117 is generally correct, however in King Cove (described at page 3-116) all waste is converted to fish meal, not ground and discharged as stated. Additionally, the document fails to note the processing activities of Icicle Seafoods in Dutch Harbor. The following language can be inserted to describe that activity:

“Icicle Seafoods owns two floating processors which process crab in the area. The BERING STAR processes opilio in season with a daily processing capacity of 125,000 pounds live weight. The ARCTIC STAR processes red king crab in season and has a daily processing capacity of 250,000 pounds live weight. The two floaters operate under the general NPDES permit. The waste is ground and discharged at an approved site. The most recent survey showed an accumulation of waste covering 0.23 acre to a maximum depth of 2-3 inches.”

Section 3.4.4.1 (Pg 3-183 to 3-200) (Harvest Sector Existing Conditions). In this section, data is presented that is premised upon the residence of the owners of vessels. See, for example, table 3.4-12 at page 3-185. The text needs to explain the basis upon which residence was determined. Partnerships and corporations own many crab vessels, and the residence of those that own a partnership interest or shares in a corporation is not known. The exact share of each partner or shareholder of each vessel is also information that, historically, was not very accurate.

Section 3.4.4.1 (Pg 3-183 to 3-200) (Harvest Sector Existing Conditions). The data also gives annual average data compiled for a lengthy period of time (1991 – 2001 or 2000

depending on the data set). In some cases, the average is of a percentage. This is true for both harvesting data (see for example table 3.4-13 at page 3-186) and processing data (see for example table 3.4-27 at page 3-203). The text should point out the method used to calculate average percentage – is it with or without “weighting” the yearly data.

Chapter 4. Economic and environmental consequences of the alternative

SSC Minutes of Feb 2004. The following do not appear to be incorporated into the EIS:

- “Throughout the document there seems to be an assumption that binding arbitration will occur and that prices will not be successfully negotiated without resort to binding arbitration.”
- (Page 4-151 – the middle paragraph) [now Page 4-150 & 4-151] Opportunities for substitution are misrepresented. For example, see the statement in the middle of the page: *"So, although fewer crab lines will be required under rationalization, some of the facilities that become excess might be usable for other processing activity."* In the next paragraph. *"Since processors can use many of the facilities used for crab processing in other processing activities..., the capitalization of the processing sector may not change dramatically..."* misrepresents what “capitalization” refers to. Capitalization is not a physical concept; it is an economic concept.
- (Page 4-157) [now Page 4-160] The last sentence on this page *"If harvesters are able to drive processors to compete for B share landings..."* is conditional. It should not be. Replace “If” with “Depending on the extent that”.
- (Page 4-159 – first full paragraphs) [now page 4-160] The SSC recommends the removal of the second sentence of the first full paragraph. “Vertical integration reduces any dependence on harvesters for landings and provides additional information to processors that can be used in negotiations.” That is only true if the firm is 100% integrated. Crab firms are substantially less integrated than that.

Processor participation level and processing practices under each alternative

Pg 4-56. In Table 4.1-9 there appears to be a typo. In the category “Processor participation level”, under the IFQ and Cooperative alternatives, there is this statement: “Temporal dispersion of fishing will facilitate removal of vessels from the fishery. (underlining added)” It probably was intended to read the same as under the three-pie category: “Temporal dispersion of fishing will facilitate removal of processing capacity from the fishery. (underlining added)”

Entry to the processing sector

Pg 4-143. It is agreed that the operational difficulties under the status quo is a barrier to entry – that is in fact why there are so few processors now. However, after rationalization, new entrants will have substantially fewer operation barriers. They will have time to learn the trade, marketing and develop the organizational skills required to run an efficient processing operation. In the status quo, there is

little time to “learn from your mistakes”. The financial costs, in particular the credit facility required to purchase, process and hold inventory, under the status quo are substantial. Crab is very high cost inventory, and seldom if ever is sold faster than the bills are due. The carrying costs under a rationalized fishery will be significantly reduced, to the benefit of new entrants that otherwise would not be able to secure the credit facility to engage in the status quo fishery. To enter in the status quo probably does require the purchase of a facility, and it must be of a capacity to compete with other high daily outputs of competing processors. A significantly lower capacity will be required in the rationalized fishery, with resultant lower capital costs.

Effects of the individual fishing quota alternative on entry to the processing sector

Pg 4-144, first paragraph. The document states that existing processors will have a “clear advantage over newcomers” under the IFQ alternative. For reasons stated above, the operational advantages are diminished once the IFQ program is implemented. Additionally, many existing processors will have the disadvantage of capacity and capital investments sized for the needs of a derby fishery, carrying with it the operating costs of a larger facility, while a new entrant can start and stay “properly sized” since capacity is no longer the primary service given the fisherman. Additionally, if live crab markets become significant, the location of buying may be more important than having plants at all (i.e., the hardware needed to buy and ship live crab is insubstantial compared to the hardware required to process and hold frozen product). Plants developed in remote locations may be useless for live shipments, including major ports such as King Cove, Akutan, St. Paul and St. George (ports with little access to reliable air service). Even the options for Dutch Harbor are minimal with the volatile weather and the announced suspension of jet service to that city. The EIS should at least be toned down to state that “some existing processors may have an advantage over newcomers”, and note the disadvantages that some existing processors might have under the IFQ alternative.

Pg 4-144. In the discussion about the effect of the IFQ alternative on processors, it should be noted that there will be a substantial incentive for processors to purchase fishing quota under that system, with implications for the nature of the fleet and communities where fishing quota owners reside. Similar incentives may exist under the Cooperative alternative. Also see last paragraph pg 4-142 on vertical integration.

Effects of the three-pie voluntary cooperative alternative on entry to the processing sector

Pg 4-145. “Processors, therefore, are less dependent on share holdings for continued participation than harvesters.” This statement, and the text

supporting it, should be removed from the EIS. The statement is logically flawed in that it compares different circumstances for the sectors. It concludes processors are less dependent on PQ than harvesters because processors have the option of buying B share crab without a PQ requirement. Harvesters, it argues, on the other hand must have IFQ to harvest crab, and they are therefore more dependent on the quota than processors. This “dependency” arises, if at all, merely because the alternative allocates 100% of the fishing privileges in quota but only 90% of the processing privileges in quota. Give the processors 100% of their history and the argument they are “less dependent” goes away.

The conclusion seems also to be based on the perspective of processors that have no PQ still being able to process (B share crab) compared to harvesters with no IFQ who cannot still fish. Discount the fishing history, like processors are discounted, and the disparity goes away. In fact, each group is “dependent” for each scrap of quota it is issued, even if it is not all that the receiver would like to have received.

Capitalization of the processing sector

Pg 4-147 Table 4.6-2 includes an assertion that, under the preferred alternative, entry into the processing sector “requires the purchase of a facility and operational expertise”. Under the two other rationalization alternatives, it states that entry requires a “facility and operational expertise”. Several comments are offered on this. First, a query, why is the word “purchase” used under the three-pie alternative? Why is it not used under the other two rationalization alternatives? Second, the most likely scenario under which a facility is required is the status quo. Leasing or purchase of quota (including processing quota) will not require a facility, and there will be substantial surplus capacity available for custom processing for any holder of IPQ.

Pg 4-149 & 4-150. Typo. Reference to table 4.6-3 should be changed to 4.6-4 (Processor Capitalization)

Pg 4-149. Under the status quo, the EIS states that some of the facilities that become excess (due to low quotas), including components of them such as cold storage, floor space and housing, can be used for other processing activities. On the assumption that this is a true statement for the processing sector (but an assumption subject to debate, in our opinion, as reflected by the crab processing facilities currently idled by low quotas rather than engaging in alternative activities), the EIS needs to be balanced and provide a similar statement for the harvesting sector, that vessels and gear can be used for alternative fishery or even non-fishery activities (Pg 4-147). In fact it is known that many Bering Sea crab vessels are used not only in alternative activities in the U.S., many are used for fishing or other activities in other parts of the world. It could also be noted that the federally funded vessel buy-back program will help address the surplus crab

harvesting capacity under the status quo (though it will not address the race for crab inherent in the status quo), while there is no parallel buy-back program for surplus processing capacity.

Effects of the cooperative alternative on capitalization of the processing sector

Pg 4-150. The EIS should point out the differential effect this alternative will have among processors by requiring that 90% of all of a harvester's quota be delivered to the processor that bought the plurality of its crab (potentially 51% or less), all species combined, in the year prior to the program. This means that processors that tend to buy less than a majority of the crab from a harvester will have no crab from that harvester when the program is implemented (recognizing that 10% of the crab is up for grabs). This might have a significant negative effect on some smaller processors, processors more remote from the fishing grounds, or processors that specialize in one particular fishery. It may also impact some communities more than others, especially those communities that are farther from the fishing grounds or whose processors tend to purchase less than a plurality of an individual fisherman's crab.

Effects of the status quo alternative on efficiency in the harvest sector

Pg 4-155. Footnote 8 suggests that Kodiak processors pay more for crab than those in Dutch Harbor to "compensate harvesters for the additional distance to that port from the fishing grounds". It would be more accurate to state that a higher price is paid for that reason, including the higher deadloss that will be expected, and the Kodiak processor has cost savings that it can pass along to the harvester (for example, the cost of transportation and labor).

Effects of the three-pie voluntary cooperative on efficiency in the harvest sector

Pg 4-157. Contrary to the conclusion in this section, it can be argued that regional or community landing requirements may result in processing in locations closer to the fishing grounds, thus enhancing harvester efficiency rather than detracting from it. The transferability of quota (both fishing and processing) should further reduce the inefficiencies that are built into the preferred alternative. In the discussion about the IFQ alternative and its effects on harvester efficiency, there is an unstated assumption that there will be a buyer/processor for all of the IFQ in each region. However, there is no provision to ensure that is the case. Consequently, one potential effect on harvester efficiency (revenues) is a lack of a buyer, particularly in the northern region. Under the preferred alternative, by contrast, holders of IPQ are contractually bound to buy crab at least at the time and place determined by an arbitrator.

Pg 4-160. The EIS states that under the preferred alternative "the distribution of benefits of landings of crab harvested with A shares will depend greatly on the arbitration program". This discussion would benefit by re-iterating that harvesters

will continue to have the option of collective bargaining (and the anti-trust exemption that goes with it) and the ability to withhold product (strike) on an individual or collective basis as an alternative to seeking binding arbitration. It would also be fair to point out that under the status quo, an individual or even a small group of individual fishermen cannot effectively strike since they do not have individual shares.

Pg 4-160 Last line, word missing. ...could derive (more/less) revenues...

Effects of the cooperative alternative on efficiency in the harvest sector

Pg 4-163. Distribution of revenues. The text should note that harvesters retain the right to engage in collective bargaining and will enjoy an effective right to individually or collectively withhold product (strike).

Effects of the IFQ alternative on efficiency in the processing sector

Pg 4-165. The EIS states that “the distribution over a longer period of time creates an opportunity for improvements in technical efficiency and efficiencies in choices of outputs if processors are able to coordinate deliveries, schedule crews and allot facilities, ”. The tool available to achieve these cost efficiencies is by paying the harvester more to deliver within the processor’s schedule. However, paying more raises the operating costs to the processor, and it is likely that extra payment will be more than the cost savings achieved. In the halibut and sablefish fisheries, we know from official state records that raw fish prices to fishermen have increased dramatically, and that the margin for processors (the difference between sales revenues and ex-vessel prices, adjusted for recovery) has decreased. Consequently, we disagree with the conclusion set out in table 4.6-6, page 4-172 that “processor efficiency...improves with the end of the race for fish” under the IFQ alternative. This discussion would benefit, as we have commented elsewhere, by distinguishing the effects in the short term from those of the long term, when a new equilibrium has been achieved.

Pg 4-166, last three lines. The EIS states, “Overall processing efficiency is likely to be maintained or improve in the long run. During transitions, however, processing efficiency could decline as a result of losses in technical efficiency and intense ex vessel price competition.” If the intent is that “transition” means the short term period of change to a new equilibrium and “rationalized fishery” means that point in time in the long term when the new equilibrium is achieved, then this statement may be true. The EIS should make it clear that will be the case only after the processors re-capitalize to the level needed post rationalization and if the processors are then able to “coordinate deliveries, schedule crews and allot facilities” properly (see Page 4-146 and comment above). In the short term, processors that are forced to operate existing capital designed for the derby fishery will be at a cost disadvantage to those who can re-capitalize operations based upon the new management program. It is unlikely that these existing

processors, in the context of the IFQ program, will be able to capture normal profits, let alone capture some of the intrinsic value of crab.

It should be noted that under an IFQ alternative the ability to bargain collectively by fishermen is retained, while processors will not have a similar legal exemption from the anti-trust laws. It should also be noted that strikes under an IFQ fishery are more effective than under the status quo, since no one can take an individual's quota away while that individual strikes. Additionally, striking is effective in the status quo only by collective action, while under the IFQ alternative, individuals may choose to withhold their product.

Effects of the cooperative alternative on efficiency in the processing sector

Pg 4-168. The discussion fails to note the impacts on processor revenues and costs as a result of specific elements of this alternative. A processor will be eligible to buy a harvester's crab only if it bought the plurality (or majority, as stated in the text) of the harvester's crab in the year prior to implementation of the cooperative. Unlike the preferred alternative, where historical landings determine share, this system will result in a one-year "bidding war" under which processors will necessarily forfeit margin to obtain market share in the following year. This will raise processor costs without a change in revenues – and is therefore inefficient for the processing sector. It will of course raise harvesting revenues without increasing costs, an efficiency gain for the harvesting sector (assuming efficiency for the harvesting sector is defined the same way as for processors). This rule also results in some processors losing any access to crab it may have purchased in the year prior to implementation – every processor that bought less than a plurality (majority) of the crab from a harvester. This will probably have a negative effect for smaller processors or those remote from the fishing grounds (particularly if the majority of the crab comes from multiple trip fisheries). The system also allows a harvester to leave for another cooperative if 10% of its crab is forfeited to the remaining harvesters in the cooperative. This "cost" to the harvester is a benefit primarily for other fishermen, not the processor associated with the cooperative.

Pg 4-169 Last para. Insert word. "The year before implementation"

Pg 4-173 Table 4.6-6 should be re-titled "Production Efficiency Under Each Alternative"

Spill over effects on other fisheries

Pg 4-179. This section would benefit by including a discussion about how processors might behave differently in other non-crab fisheries depending on the alternative chosen, and the potential effect that would have on non-crab fishermen or other communities. Limiting the discussion to harvester only spillover effects leaves an incomplete picture.

Pg 4-181. Typo. Italicized paragraph titles should be consistent. “Effects of the [] alternative on other fisheries [Note: “Effects of the [] alternative on the acquisition of excessive shares in the fisheries”]

Community/social impact of alternatives: harvester sector

Pg 4-188 to 4-193. In this section, data is presented that is premised upon the residence of the owners of vessels. See tables 4.6-14 to 4.6-16. The text needs to explain the basis upon which residence was determined. Partnerships and corporations own many crab vessels, and the residence of those that own a partnership interest or shares in a corporation is not known. The exact share of each partner or shareholder of each vessel is also information that, historically, was not very accurate. The text needs to explain how the vessels were assigned to communities, and should clearly note the potential errors in the data.

Effects on vessel safety

Pg 4-239. The EIS recounts that some assert that under the preferred alternative excessive consolidation of processor shares “may result in a situation where vessel owners or captains have less autonomy” to take weather into account when deciding to fish. Those that assert this then say the preferred alternative will not result in a safety benefit. The EIS responds that the B share system, provisions that prevent excessive processing shares, and regional landing requirements “could all work to partially or completely prevent this problem from materializing.” This discussion, and the characterization of this issue as a “problem” (implying it is real) gives too much credence to the assertion that a nameless someone has made. First, delivery timing and conditions are a subject of price negotiations and, if negotiations do not succeed, strike or arbitration may be used to resolve the issue. If fishermen are genuinely concerned over this issue, there is no doubt it will be addressed in the typical way such issues are dealt with. Second, there is no evidence that processors have exercised this type of control even over vessels that they currently own, let alone those they do not. Third, under all of the alternatives (including the status quo) vessel owners do not necessarily fish on the vessel or even (unlike the processor) are located where fishing occurs (and where the weather can be observed). If the EIS is going to discuss the potential “problem” that processors might control fishing operations, then it should at the least also discuss the potential “problem” that the owner of the vessel and quota might control fishing operations.

The EIS should if anything simply say that there is some concern that vessel captains may have less autonomy in making such decisions under each of the three rationalization alternatives because of the privileges granted to those that do not fish. It should then state (as it does in the draft text) that evidence from the halibut and sablefish fishery suggests the concern is unfounded, and the preferred alternative, at least, has a system to resolve such “problems” (through arbitration of the terms of delivery).

Cumulative effects analysis for Bristol Bay red king crab – Status Quo and Alternative Rationalization Management Plans

Pg 4-301. Change in reproductive success. Table 4.9-3 states that the effect of various fisheries on the reproductive success of BBRKC is “unknown”. This seems inconsistent with the text at page 4-285/line 11, where it says that “...the incremental effects of the alternatives (on reproductive success of BBRKC) is considered insignificant...” Either the text or the table should be modified to make this clearer and/or consistent.

Cumulative effects analysis for economics and socio-economics

Pg 4-361. The EIS discusses the cumulative effects of the alternatives on the economic and socio-economic condition of the fishery and its participants. It states at the beginning that for crab only harvesters and processors the cumulative impacts are generally the same as the direct or indirect impacts of the alternatives. The text does not define what is a “crab only” harvester or processor, and maybe it does not need to do that because it is likely there is no such thing. However, if the EIS is to make this statement, it may be important to attempt to describe what a “crab only” harvester or processor is, and what percentage of the sector it represents. Also see crab only harvester comment on Pg 4-365.

Summary of Socio-economic, Community, and Regional Cumulative Effects

Pg 4-378. Community/social impacts-processors. Alternative 2. “Qualifying years determine the quota allocations which may favor some communities and regions over others (See Table 4.6-14). Table 4.6-14 refers to distribution of harvester communities and not the communities where processing occurs. Suggest you cite data that concerns the communities where processing will occur.

Pg 4-384. Typo. Table 4.9-17, Alt 2-4. Change “rebinding” to “remaining”.

Pg 4-390 to Pg 4-393. Typo. Several rows of information are repeated.

Appendix 1 –Regulatory Impact Review (RIR)

Pg 570. Table 4.1-6 “*” symbol not explained.

Pg 577. Monitoring and Enforcement. The USCG has independent monitoring and enforcement and it should be acknowledged in this paragraph. In addition, the slowing of the race for fish will necessitate wider patrol areas over longer periods of time than occurs during recent short seasons.

Pg 579 3rd paragraph, line 6 Insert word “...the level [of] high grading...”

Pg 585 to 591. Titles of sections 4.3.1.1 (Economic efficiency in the harvesting sector), section 4.3.1.2 (Net benefits of the processing sector), and section 4.3.1.3 (Net benefits in production (harvesting and processing) should be consistent.

29 April, 2004

To: James W. Balsinger
Administrator, Alaska Region
NMFS
P.O. Box 21668
Juneau, Alaska
99802-1668



Crab EIS
4-29-04

(102)

2004 MAY -9 AM 9:22

Re: DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR "BSAI CRAB" (March 2004)

Dear Mr Balsinger,

I would like to comment on the Draft EIS for BSAI Crab Fisheries. (March 2004)

In Chapter 4 -page 19 the last paragraph Titled OBSERVERS has the following comment:

"In an IFQ fishery, vessels would be engaged in fishing over a longer part of the year, complicating oversight of fishing. To adequately monitor the fishery, changes in observer coverage might be required by the BOF. Under any rationalization program that increases the season length, the state believes that crab C/P vessels will need to have enough observer coverage to enforce sex and size limits for crab. One reason that BOF placed observers onboard crab C/Ps was because those vessels were demonstrated to have been retaining sublegal sized crab. Because sorting of sublegal crab down the processing chute can occur during hours when catches go unobserved (an observer is sleeping, eating, or resting, etc), coverage should be increased under any rationalization program. **THOUGH MANAGERS BELIEVE THIS OCCURS UNDER THE CURRENT, PRE-RATIONALIZATION FISHERIES, OTHER ENFORCEMENT ISSUES ARE CURRENTLY A PRIORITY.**"

As the principal owner of the Crab Catcher/Processor PRO SURVEYOR I strongly resent these comments.

If you go far enough back in time you can find anything you want to find on any group of vessels.

We have been a crab catcher/processor since 1989 and have been carrying ADF&G certified observers for 16 years in a row as have all other crab C/Ps at our own expense. There has not been one enforcement action of any sublegal crab taken in the past 16 years on any of the C/Ps. How can you possibly accuse a group of vessels of carrying out a "CONSPIRACY" on their vessels, which it would have to be?

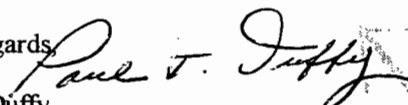
Prior to the start of any crab season on the PRO SURVEYOR the first thing we do is to have the observer "MEASURE" and "CERTIFY" our crab gauges to insure compliance with the regulations.

The sexually mature size limit for Opilio Snow Crab is 3.1 inches. The market size limit for Snow Crab is 4.0 inches. Anything smaller than a 4 inch snow crab is unmarketable. The legs are simply too small.

WHY WOULD ANYONE FISHING UNDER AN IFQ RATIONALIZED CRAB FISHERY KEEP SUBLEGAL CRAB AS PART OF THEIR QUOTA? IT SIMPLY MAKES NO SENSE!

I do not personally believe that the current ADF&G management team in Dutch Harbor that manage day to day fishing activities in the Bering Sea Crab fisheries believe there to be any illegal activity on the Crab Catcher/Processors. There is not and to say there is in the Crab EIS is "irresponsible"!

Best Regards,


Paul J. Duffy
President
Golden Shamrock Inc.

CC: Stephanie Madsen, Chairwoman, North Pacific Fishery Management Council
CC: Kevin Duffy, Commissioner, Alaska Dept of Fish & Game
CC: NOAA Office of Strategic Planning (OP/SO)

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• PRO SURVEYOR PARTNERSHIP •

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April 30, 2004

James W. Balsiger
Administrator
Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

Dear Sir:

The Alaska Crab Coalition (“ACC”), a trade association whose members own vessels that operate in the crab fisheries of the Bering Sea and Aleutian Islands Area (“BSAI”), provides these comments on the Draft Environmental Impact Statement for Bering Sea and Aleutian Islands Crab Fisheries (“DEIS”). The ACC has carefully reviewed the DEIS and has concluded that it complies with the National Environmental Policy Act (42 USC 4331, et seq.) and provides an analysis that fully complies with applicable federal laws and executive orders, including those listed at page 1-22 of the DEIS.

The ACC agrees with the assertion at page 1-25 of the DEIS that the preferred alternative analyzed in the DEIS is exactly the program referred to in section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), as amended by Title VIII, section 801, of H.R. 2673, the Omnibus Consolidated Appropriations Act, 2004, P.L. 108-199 (“Consolidated Appropriations Act”). Therefore, as further asserted by the DEIS at page 1-25, the preferred alternative complies with the requirements of the MSA. The ACC notes that its representatives were closely involved in the development of the program at the North Pacific Fishery Management Council (“Council”), and in the preparation of section 801 during the course of the legislative process.

While the ACC believes that the DEIS is legally sufficient, the document would have benefited from inclusion, in Appendix 2 and 3, of the entire statement by Senator Ted Stevens on the subject of the BSAI crab rationalization plan and section 801 upon Senate consideration and passage of H.R. 2673. The omission is not a fatal or even substantial flaw in the DEIS, because the statement, which is found in the Congressional Record, January 22, 2004, at S150-S153, stands of record on its own as legislative history to section 801. However, for convenience of future reference and for the sake of completeness, the full statement should be included in the final environmental impact

statement that will be developed from the DEIS and related public comments and further analysis.

The ACC particularly takes note of the observation, in Senator Stevens' full statement, that "a harvester-only quota share [system] ... would ultimately result in a de facto processing quota for the exclusive group of boat owners that control the harvesting rights to the resource." The ACC notes that this situation would have eventuated from the inevitable vertical integration of crab operations at sea by harvesting quota holders, to the detriment of the historical processor participants and at considerable cost to certain coastal communities that have depended on deliveries of crab for processing. The ACC did not seek a system that would have had such consequences, but rather, sought an outcome that would achieve, as the program ultimately provided, a fair and reasonable balance among the harvesters, processors, and communities. The ACC believes that it would be useful to include this explanation in the final environmental impact statement.

Having suggested these points for inclusion in the final environmental impact statement, the ACC would like to highlight some of the more important points addressed in the DEIS regarding conservation and resource benefits to be derived from implementation of the crab rationalization plan and revisions to current management strategies. The information in this section has been provided by the Alaska Department of Fish and Game ("ADF & G") and NOAA Fisheries.

- **Bycatch reduction of female and undersize male crabs through liberalization of pot limits as a result of increased soak times and reduced pot lifts:** "A race to fish can lead to excessive gear on the grounds, gear conflicts, and lost gear. To minimize these problems, limits on gear have been implemented by the current FMP. In a rationalized fishery the number of vessels on the grounds at any one time would likely be reduced. If vessel participation decreases through formation of cooperatives, leasing arrangements, or with exits from the fishery with the sale of QS, the BOF may decide to increase the number of pots allowed to be fished by each vessel or even consider rescinding pot limits entirely." (Page 2-55).

"Changes in gear limits can have both biological and economic implications and serve to protect the resource health as well. As gear limits and seasons are relaxed, actual pot soak times should increase, as the need to pull a pot in a short period of time is no longer necessary. This increase in soak time would allow the crab to sort on-bottom, diminishing the number of undersized crab brought to the surface. As result of the increase in soak time, and fishing in potentially less severe weather, handling and bycatch mortalities should decrease." (Page 2-55).

Further the EIS notes in the bycatch discussion on the three pie program, Alternative 2 that: "In general bycatch should decrease under Alternative 2 due to changes in fishing practices and increased monitoring. A decrease in bycatch of female and sublegal male crabs of the target species would reduce the total fishery mortality. To reduce discards of non-target crab, State regulations could

be considered to provide for multispecies retention for quota share holders or voluntary cooperative members.” (Page 4-89).

“Alternative 2 would slow the individual fisherman’s harvest pace and better allow the pots to sort on the bottom. This in turn results in (a) longer pot soak times to sort out unwanted catch on the bottom; (b) less crowding in areas of high crab productivity; and (c) ability to avoid marginal grounds where unwanted bycatch is often found, and (d) improve handling of crab on deck. The State would consider expanding the harvest season within the biological seasons to improve harvest of target species and reduce bycatch. With the slowing down of the fishery comes the opportunity to let the pots soak longer on the bottom, which results in more selective catches of legal males and greater escape of sublegal males and females. Longer seasons and relaxed pot limits would allow required crab pot escape mechanisms to more effectively sort on the bottom. Given this opportunity, it is assumed the fishermen would soak pots longer to maximize the retained catch per pot pull and reduce bycatch. Fishermen want to avoid bycatch because, besides being wasteful, bycatch, means sorting on deck, which takes time away from pulling pots. Research has shown that longer soak times result in more sorting by the gear’s escape mechanisms. With more soaking time, the more time the smaller female crab have to escape from the pot. The same holds true for sublegal male crab. However, if pots soak too long, then mortality may actually increase to predation by octopi and amphipods. Fishermen will need to determine optimal soak time long enough to allow females and sublegal males to escape but not so long that the crabs in the pot suffer from predation.” (Page 89).

In practice, fishermen would not let their pots soak too long, as this would cause a loss in revenue and efficiency in the operations.

“Formation of voluntary cooperatives can further reduce these impacts as members fish cooperatively and help fellow members stay away from areas of high bycatch. Increased season lengths, if adopted by the BOF would allow fishermen the opportunity and time necessary to search for fishing grounds with lower concentrations of bycatch. This is possible because most stocks tend to segregate geographically by size and sex. Female and small male crab could be better avoided. Additionally, fishermen could exchange instantaneous information about catch rate and mix of harvest. If one member of the cooperative experiences high catches of females and sublegal males, the rest of the vessels in the cooperative would be alerted to avoid the area of high bycatch. Additionally, state managers monitoring a slower paced fishery, would be in a better position to issue timely in-season area closures to move fishermen out of areas of high bycatch.” (Page 4-89).

“Handling mortality of bycatch is expected to decrease as handling practices improve with longer fishing seasons and the end of derby fisheries. Old-shell crab, which may be an important reproductive component in the population,

females, and sublegal males could be sorted quickly and returned unharmed.” (Pages 4-89, 4-90).

- **Use of TACs will eliminate potential for overharvests experienced under current GHM harvest management:** “Under an IFQ program, each fisherman has a certain amount that they are allowed to catch and retain. This prevents harvest above the GHM, with proper catch accounting and penalties for overages, because each fisherman is constrained to harvest their IFQ. It additionally proposes a change to the FMP that allows the State to move from GHM to TAC management. As noted in Section 4.1.1, TAC management may also provide a more enforceable tool that assures the season’s allowable catch could not be exceeded. The State’s actions would include adoption of TAC accounting of both live and dead crab and review regulations on retention of landed crab. (Page 4-87).

“Under status quo, each fishery has a minimum GHM for fishery opening to maintain the ability to manage the fishery inseason. If the calculated GHM is below the minimum GHM, then the fishery is not opened. The minimum GHM prevents a large number of vessels from greatly exceeding a small fishery’s GHM before managers can close the fishery. Under Alternative 2, a minimum GHM may not be necessary because the harvest amount would not exceed the quota allocation. Additionally, fishermen may transfer quota so that only a small number of vessels harvest the TAC. Removing the minimum GHM would result in allowing fishing to continue at lower stock sizes than under status quo.” (Page 4-87).

- **Measures to address highgrading:** “Highgrading is the discarding of legal male crabs that do not meet quality specifications, such as shell condition and size. Highgrading may occur under a rationalized fishery if the incentives exist for fishermen to discard a portion of legal males and continue to fish for higher quality crab. Highgrading can have negative consequences to stock health. Highgrading is a resource concern because it may alter the composition of the stock by removing only the largest, cleanest crab. (Page 4-87)... State management tools to address this would include reviewing the observer program to consider whether the current coverage level is adequate to assess fishery changes, reviewing current harvest strategies adopted by the BOF, and a review of harvest patterns if there is a need to impose gear changes such as setting maximum and minimum escape mechanisms within pots. (Page 4-87)... Other options the BOF may take to address highgrading might include adopting a minimum/maximum mesh size escape panel, ring and tunnel entrance openings to prevent highgrading on the bottom and still allow female and sub-legal crab to escape, time-area closures, increased observer requirements or, less desirable, mandatory retention of all legal animals up to individual or cooperative-pooled quota share limits. Full retention may not be enforceable, and could be counter-productive by lowering long-term fishery value and by increasing deadloss in the

tank due to the spread of disease through retention of legal crabs in poor condition.” (Page 4-88).

- **Rationalization addresses high harvest effort relative to total allowable catch:** “The relevant issue includes the number of vessels participating, the number of pots fished, and how the crabs are handled. Harvest methods also include the extent to which fishermen comply with regulations. Concern over harvest methods is focused on the impacts on the crab resource that cause additional mortality on legal male crab and on sublegal or female crab. There are three indicators of impacts: the handling of crab, the amount of harvest effort, and the manageability of fisheries.

“Safe and timely handling of the crab brought on board indicates how rational the fishery operation is and how much stewardship is embraced by the harvesters and crew. As noted above, the preferred alternative slows the pace of fishermen, allows pots to sort crab in the water and allows fishermen to pick better weather conditions; all of which promotes better handling. The preferred alternative should also increase stewardship with the provision of captain shares. When a quota holder is on board during a fishery operation, the long-term gains of a healthy resource are thought to have a more meaningful impact on the day-to-day operations than short-term returns to individuals not directly participating. Expanding fishing seasons within the biological period would provide fishermen a wider selection of better weather days, potentially reducing handling mortality.

“High harvest effort is an indicator of an overcapitalized, over capacity fleet. The problem portrays itself by an excessive number of vessels and gear being deployed in relation to the available harvest limit. Harvest effort above the amount needed to efficiently harvest the GHL can result in crab harvests exceeding the GHL or excessively conservative management measures to protect stocks that lead to under harvest, increased bycatch, and increased habitat impacts. While current pot limits have generally resolved the pot loss problem and some wasteful fishing practices, the full benefit of the current harvest strategies cannot be achieved under derby fisheries where fishermen do not allow pots to soak long enough to sort unwanted crab on the bottom. Alternative 2 would directly address the problem of high harvest effort by reducing capacity through IFQ buyouts and allowing vessels to combine and fish quota from other vessel owners.

“ADF&Gs ability to properly manage crab fisheries is a further indicator of changes in harvest methods. Under current derby fisheries, over or under harvest can occur. Harvest strategies that promote stock health or stock rebuilding are hampered by competitive fishing activity. The implementation of a rationalization program and the accompanying complementary Board regulations should greatly improve the manageability of the fishery and allow fishermen to focus on product quality and lower operational costs.” (Page 4-91).

It is noteworthy that the Alaska Board of Fisheries in conjunction with ADF&G has established a BSAI Crab Implementation Task Force that has already held two meetings to review regulations regarding fishing seasons, pot limits, gear restrictions, observer coverage and other management measures. The BOF, at its scheduled March 2005 meeting, will take actions to revise seasons, pot limits, gear restrictions and observer coverage, as necessary, to promote conservation and management for simultaneous implementation with the preferred alternative in August 2005.

- **Analysis of the potential adverse effects of the preferred alternative on essential fish habitat and the managed species conclude the preferred alternative should provide significant benefits to habitat:** “Crab is fished exclusively by pot gear in the BSAI. The extent to which pot gear impacts the benthic habitat is not well known. Although pot gear likely affects habitat during the setting and retrieval of pots, little research quantifying the impacts has been conducted to date. The EFH EIS analyzes the pot gear for its impacts on benthic habitat. The analysis includes a description of gear and fishery operation, habitat type where fishery occurs, and the existing measures to mitigate adverse effects of these fisheries. The analysis also looks at the total area impacted by pot gear and the area impacted as a portion of the total Bering Sea shelf. As shown in Table 4.4-1, the total area impacted by pot gear is less than 0.5 percent of the total area of the Bering Sea. This preliminary analysis does not indicate that the deployment or retrieval of pot gear irreparably alters the benthic environment. Through continued research, a better understanding of the effects on pot gear on the benthic habitat on a finer scale will be understood.” (Page 4-126).

“It is anticipated that programs of individual quotas and voluntary cooperatives will lead to reduced vessel effort and a more orderly fishery over an extended harvest period. Compared to the current fast pace, competitive derby fishery, the preferred alternative should provide these significant benefits to habitat:

1. reduced effort and crowding on marginal grounds;
2. temporal redistribution of effort to maximize harvest of target species and minimizes bycatch;
3. reduced gear loss from fishing marginal ground or from fishing in concentrated areas, impacting habitat by less ghost fishing of lost gear; and
4. increased selectivity of gear for target and non-target species alike-multispecies retention, which in turn, reduces bycatch mortality of handled and returned crab.

“Additionally, the State intends to conduct an evaluation of research on possible closed areas to protect crab spawning, settling, rearing and mating habitat, and to review the crab observer program to ascertain its value in assessing habitat impacts.” (Pages 4-127-128).

- **NOAA Fisheries concludes that none of the alternatives under consideration reduces quality and/or quantity of Essential Fish Habitat:** “This conclusion is based on the analysis presented above and the existing mitigation measures in place in the BSAI crab fisheries. Pot gear, and the action of setting and retrieving pots, does affect EFH, as discussed above. Fish, crab, and other benthic species are captured and removed from the ecosystem, some discarded animals die, and an indeterminable number of benthic species die from ghost fishing. Pot gear damages or captures other benthic species and may cause habitat degradation. However, based on the information available, NOAA Fisheries does not conclude that these effects reduce quality and/or quantity of EFH.” (Page 4-131).

The analysis also notes that extensive measures to mitigate the effects of the crab fisheries on EFH have been implemented under status quo management: gear restrictions, harvest strategies, fishing seasons, limited access and size and sex restrictions. (Page 4-131).

- **The analysis predicts insignificant effects of all the alternatives on the BSAI ecosystem:**
 1. Effects on predator-prey relationships will be insignificant: “The effects of removal of crab species on predator-prey relationships has not been a concern in the status quo regime because of the small amount of crab biomass removed from the system and the fact that crab are not prey for marine mammals and seabirds. Additionally, it is expected that the rationalization program alternatives would result in decreased temporal/spatial concentration of the BSAI crab fisheries and may decrease any effects of the fisheries on predator prey relationships. For these reasons, the effects of the alternatives on predator-prey relationships are determined to be insignificant.” (Page 4-134).
 2. Effects on energy flow and balance will be insignificant: “Combined evidence regarding the level of discards relative to natural sources of detritus and no evidence of changes in scavenger populations that are related to discard trends suggest that all of the alternatives would have insignificant ecosystem impacts through energy removal and redirection. Under the alternative rationalization programs, discards are predicted to decrease as fishing practices change. The extent of this decrease cannot be predicted with accuracy because the exact changes to fishing practices cannot be predicted with any certainty. Likewise, offal production may decrease as processing practices improve recovery rates. This decrease is likely to be minimal, and the effects of this decrease would not be measurable. (Page 4-135).
 3. Effects on biological diversity will be insignificant: “No fishing induced extinctions of crab or other marine species have been documented in the

last 30 years or so. However, king crab populations in and near Kodiak have crashed and not returned to past levels of abundance despite eliminating fishing. No fishing-induced changes in functional (trophic) diversity under the current management regime have been detected (NMFS 2001a). Thus, functional diversity was considered to be an insignificant effect on the environment. There is a concern that because crab fisheries only remove the largest males, that the fisheries may alter the genetic diversity of the stock. Research is ongoing on this subject, however, given the information available to date, this is hypothetical. Genetic diversity changes due to removal of larger crab that have not been quantitatively assessed, but because research on more heavily fished areas indicates impacts are minimal, all of the alternatives were judged to have a insignificant impact on biological diversity.” (Page 4-137).

- **Comments on observers on catcher processors:** The EIS, Chapter 4, page 19, Observers makes reference to “sorting of sublegal crab down the processing chute can occur during hours when catches go unobserved (an observer is sleeping, eating, or resting, etc.), coverage should be increased under any rationalization program. Though managers believe this occurs under the current, pre-rationalization fisheries, other enforcement issues are currently a priority.”

The ACC, after over a decade of experience with enforcement issues related to the 100% catcher processor observer program, is unaware of managers expressing concerns about processing of undersize crab. This is certainly not an issue with the snow crab fishery where the minimum legal size limit of 3.1 inches is substantially below the industry market size standard of 4.0 inches. ADFG also has had the opportunity over the years to make comparisons of delivery records and individual box weights, vessel to vessel, that will show discrepancies indicating systematic cheating on sublegal crab sorting. ACC has not heard any department complaints about such actions at routine Board of Fisheries triennial review periods of the catcher processor observer program.

ACC is also aware that catcher processor owners are already having discussions with NMFS Enforcement and ADF&G about enforcement and observer issues related to the rationalization issues. An industry meeting with NMFS and ADFG on these issues is scheduled for May 4th. In lieu of adding a costly second observer, options being discussed include the use of secure and certified weighing scales integrated into a secure chute that will prevent pre-sorting of undersize crab, and/or the use of standardized Product Recovery Rates (PRRs), currently in use in the sablefish freezer boat monitoring program. Discussions also include a requirement for weighing of all boxed product at the time of offloading. Some combination of the options being discussed should serve to prevent the burdensome requirement for a second observer on these vessels.

Arni Thomson, Executive Director
Alaska Crab Coalition

DEIS Comments

By John (Barney) Olsen

DEIS has certainly glossed over, if not failed completely to recognize the economic hardships that crew and captains will face as result of the NPFMC preferred alternative for rationalization.

There is plenty of evidence from other rationalized fisheries of the drastic reduction of the number of jobs available and the redistribution of earnings on the remaining vessels. There is ample reason to expect that over half the current work force of over 1300 will be out of work with no compensation. Through the creative use of coops, we can expect that number to increase. Many of these individuals are career fishermen, having invested their entire adult lives fishing the Bering Sea. For those remaining, the DEIS does admit “that competition could affect compensation or result in a wage system for some crews.”

In the Executive Summary ES-4 it is certainly a leap of faith to expect that Captain shares are intended to “provide long term benefits to both captains and crew.” But there seems a definite bias in ES-13 statement that the 3% to Captains “**should** provide some negotiating leverage”, yet the 10% B shares given to harvesters **may** give some negotiating leverage. The only way to keep those adjectives in the DEIS would be to up the C share allocation to at least 10%. The long term benefits to crew are still somewhat vague and need to be explained.

Also, not adequately conveyed, are the logistical problems that would be created if the Council were to further devalue the minimal 3% C shares by applying IPQ and regional delivery requirements. We already know finding a job will be tough, now we have to find the right job in the right region. Besides, how in God’s good name am we going to use our negotiating leverage if we have to deliver one brailer of crab from St Paul to Dutch Harbor? Anyone who actually runs a fishing boat finds this whole notion of C Share A/B split, functionally absurd.

The real surprise to me however, is the almost complete lack of mention of the redistribution of wealth ?e arnings ? wages... **Now this is the real engine that drives the whole harvester train and it's barely even mentioned.** Rents – money for nothing. The DEIS was exact in its stating the remaining captain and crews “are likely to be ACTIVE for substantially longer periods of time than in the current fisheries.” Actively sending checks for 50% of the harvest, off the top, to vessel owners who will realize better profits by not fishing. Examples are abundant in the black cod and halibut fisheries that demonstrate clearly, that in order for crew to earn historic levels of income, they must harvest close to three times the resources.

Finally, on the issue of safety, NOAA Fisheries conclusion that the preferred alternatives will have a “significantly positive effect on vessel safety” is no more than hopeful conjecture. Boats will still take a load of pots out and bring a load back in, which is when most sinkings occur. Crew will still be working in the most hostile environment in the world and they will be active longer. Red Crab 2003 saw one tragic fatality- a twenty five year veteran crabber on the nicest day of the season.

In summery, the DEIS has neglected to fully flesh out the economic hardship that clearly singles out the participants who risk the most and depend almost exclusively on this resource. Fully half out of work, those fortunate enough to work will have virtually no leverage to keep or protect their jobs. The minimal 3% C shares could be made even less effective by an A/B designation. Under leasing arrangements crew will fish longer for much less and the best any of the guys wearing raingear can hope for, is that they don't get killed or maimed.

Crab EIS
5-3-04
C05

MICHAEL A. D. STANLEY

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May 3, 2004

Dr. Jim Balsiger
Regional Administrator
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

Re: DEIS for Bering Sea and Aleutian Islands Crab Fisheries

Dear Dr. Balsiger:

I represent Alaska Trojan Partnership (ATP) which owns the crab fishing vessel *F/V Alaska Trojan*. I am writing to comment on the crab rationalization program analyzed in the Draft Environmental Impact Statement for Bering Sea and Aleutian Islands Crab Fisheries. This comment is directed at a very specific point in the rationalization program that would unfairly deny ATP an allocation of quota share (QS) for the Western Aleutian Islands (Adak) golden (brown) king crab fishery.

As you know, the Restricted Access Management Division (RAM) denied ATP a license limitation program (LLP) endorsement for the Aleutian Islands brown king crab fishery on the grounds that the *F/V Alaska Trojan* made only two, not three, documented harvests of brown king crab during the endorsement qualification period. We disagree with that ruling, but RAM's decision was upheld by the Office of Administrative Appeals and took effect on December 29, 2003. If this decision survives judicial challenge, then under the crab rationalization program as currently worded, ATP would not qualify to receive any Adak golden king crab QS despite a substantial harvest history in the fishery during the five qualifying years (1996/97 – 2000/01). Although ATP's LLP license is endorsed for several other king crab fisheries, it has little or no catch history in these other fisheries because its efforts have been directed at fishing Adak brown crab. In fact, since 2000, the *F/V Alaska Trojan* has only fished brown crab.

We understand that using LLP licenses to define eligibility in the rationalization program is intended to "maintain the current fishery participation." DEIS at 2-41. In most cases, possession of a LLP license with the appropriate endorsement would be a good indicator of present participation in the fishery. But not in all cases. The *F/V Alaska Trojan* has participated in the Adak brown king crab fishery consistently since 1994, and has enjoyed substantial catches, but was just recently denied an endorsement for the fishery. In this situation, having a fishery-specific endorsement bears no relation to the vessel's history of participation and its dependence on the fishery.

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Jim Balsiger
May 3, 2004
Page Two

We urge you to recommend to the Council a revision of the crab rationalization program so that a vessel's qualification for QS in a fishery does not depend exclusively on having received a LLP endorsement for that fishery. We understand the Council has made other exceptions to address incongruities or perceived unfairness in the rationalization program (*e.g.*, the *F/V Erla H*) and ask that consideration be given to a modification of the program that would allow ATP to receive the Adak golden king crab QS to which it would otherwise be entitled based on the extensive harvest history of the *F/V Alaska Trojan* during the qualifying years.

Thank you for taking the time to consider this comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. D. Stanley". The signature is fluid and cursive, with a large initial "M" and "S".

Michael A. D. Stanley

cc: Alaska Trojan Partnership

Deep Sea Fishermen's Union Comments
On
Draft
Environmental Impact Statement
For
Bering Sea and Aleutian Islands Crab Fisheries

The DSFU appreciates the opportunity to comment on the Draft EIS for the Bering Sea and Aleutian Islands Crab Fisheries.

Although the DSFU appreciates the efforts made in preparing the Draft, we wish to be clear that we reserve our position on the preferred alternative and we do have several areas we feel need clarification.

These comments are related to chapters 2 and 4 and the issues that DSFU believes need additional attention.

2.2 Three-Pie Voluntary Cooperative Program

DSFU and its members feel strongly that crab rationalization is the correct mechanism to revitalize the industry and encourage a safe, healthy and economically strong crab fishery. However, the members have some very serious reservations about the inclusion of processor shares and, more particularly, the 90-10 split. The Union has already expressed concerns about the three-pie voluntary cooperative alternative. In our opinion, the processor share portion of the plan comes close to running afoul of the anti-trust laws and, particularly, the restraint of trade provisions. The membership is also concerned about the precedent it sets for the next fishery that rationalizes. Once processor shares are legitimized, we foresee them being requested as a part of all rationalization plans, although current law prohibits processor shares for any fishery other than the BSAI crab fishery.

The Union believes, as stated above, the inclusion of processor quota violates the antitrust laws and is a serious policy mistake. However, since the Congress included them, we believe they should be subjected to the closest scrutiny. We are hopeful that the additional antitrust measures in Senator Stevens' legislation will prevent any problems. The DSFU believes that a maximum split of 70-30 would have at least provided the harvesters with a modicum of bargaining power and, if the claim that processors need the guarantee to remain operational is accurate, 70-30 will meet that need.

Another issue to be addressed is the cap on quota shares. The DEIS states initial recipients can own or control up to 1% of the crab quota. It is also states that CDQ groups and Processors can own or control 5%. There is a quite a differential between these two groups.

It is DSFU's understanding that for all species except brown crab, the historical Average that recipients will qualify for is about .4 or .6%; or less than one percent. It appears a

reasonable to wonder why an excessive ownership that is 10 times higher than the average initial allocation is being proposed for CDQ groups and Processors.

Our recollection is that the excessive share for halibut and sablefish was pegged at about the maximum qualification that any one recipient had. DSFU believes only 10 or 15 out of 3500 recipients were grandfathered with more than 1% and .5 percent (sablefish/halibut). Why should the council set the excessive shares so high in crab? It appears to DSFU that the Council is encouraging a massive consolidation while at the same time, arguing that they have to provide CDQ and IPQ to protect communities. Recognizing the goal is to reduce the fleet and assist in better wages and there is a fine line here, it nonetheless seems counterproductive to reduce the fleet to such an extent that the reduction negatively affects these same communities as well as skippers and crew. DSFU believes there must be a balancing of interests on this issue.

We believe reducing the CDQ excessive share to 3% from the 5% is an alternative that addresses both the excessive ownership or control issue that congress is concerned about and the community protection issue. The less the excessive share the more vessels that will deploy hence more crew. This translates into more employment for communities and more associated spending in those communities. In theory, if the excessive shares are reduced to 3%, for every 100 vessels, 33 as apposed to 20 vessels will be fishing.

If, over time, the Council decides there is a need for further capacity reduction, they can always increase the excessive shares, but once it goes out at existing levels, it can never go back and self correct without significant acrimonious discourse.

4.6.3 Captains and Crew

The discussion begins with a negative premise that predicts a decrease in both captains and crew; then it is postulated that compensation will be decreased and that captains and crew might even end up working for wages as opposed to crew shares. The 3% skipper share is supposed to compensate for these impacts. Finally, the DEIS recognizes that the minimal 3% is in C shares which admittedly will trade at a lower price. The requirement that the minimal 3% C shares be subject to the 90/10 A share/ B share division in the third year of the program is extremely problematic. The fact that the DEIS specifically addresses the negative impact this requirement has on the value of the shares and any negotiating leverage provided the skippers argues convincingly for eliminating the requirement. The DSFU will work hard for the removal of the requirement.

While captains are appreciative of being recognized in the DEIS as integral to the industry and given this minimal quota, we believe that the overall assessment is incomplete. DSFU and our members believe it is important to remember, despite deficiencies in the treatment of skippers and crew, there is value in quota. The DEIS could be misinterpreted to suggest that the Council and Congress did not intend real benefits for skippers and crew, but the Council record and legislative history reflect the fact that the intent clearly was otherwise. DSFU believes that, when, in the implementation of the crab program, inequities are suffered by skippers and crew, the

Council, the Commerce Department, and if need be, the Congress, will be obligated to take remedial measures with real, material benefits.

Clearly, DSFU would have strongly preferred a rationalization program without processor shares, on the one hand, and with equitable treatment for skippers and crewmembers, on the other. The DEIS does what such documents are calculated to do—provide justification for the preferred alternative. DSFU believes that the deficiencies lie with the program itself.

WRITTEN COMMENTS ON THE D.E.I.S.

Dear Sirs,

DEIS has certainly glossed over, if not failed completely to recognize the economic hardships that crew and captains will face as result of the NPFMC preferred alternative for rationalization.

There is plenty of evidence from other rationalized fisheries of the drastic reduction of the number of jobs available and the redistribution of earnings on the remaining vessels. There is no reason to expect that even half of the current work force of over 1300 will not be out of work with any compensation. Through the creative use of coops, we can expect that number to increase. Many of these individuals are career fishermen, having invested their entire adult lives fishing the Bering Sea. For those remaining, the DEIS does not admit “that competition could affect compensation or result in a wage system for some crews.”

In the Executive Summary ES-4 it is certainly a leap of faith to expect that Captain shares are intended to “provide long term benefits to both captains and crew. But there seems a sort of bias ES-13 in the statement that the 3% to Captains ‘should provide some negotiating leverage’ yet the 10% B shares given to harvesters may give some negotiating leverage. The only way to keep those adjectives in the DEIS would be to up the C share allocation to at least 10% and the long term benefits to crew are still somewhat vague.

Also, not adequately conveyed, are the logistical problems that would be created if the Council were to further devalue the minimal 3% C shares by applying IPQ and regional delivery requirements. We already know finding a job will be tough, now we have to find the right job in the right region. Besides, how in God’s good name am I going to use my negotiating leverage if I have to deliver my one brailer of crab from St Paul to Dutch Harbor? Anyone who actually runs a fishing boat finds this whole notion of C Share A/B split, functionally absurd.

The real surprise to me however, is the almost complete lack of mention of the redistribution of wealth—earnings—wages... Now this is the real engine that drives this whole harvester train and it's barely even mentioned. Rents – money for nothing. The DEIS was exact in stating the remaining captain and crews “are likely to be ACTIVE for substantially longer periods of time than in the current fisheries.” Actively sending checks for 50% of the harvest, off the top, to vessel owners who will realize better profits by not fishing. Examples are abundant in the black cod and halibut fisheries that demonstrate clearly, that in order for crew to earn historic levels of income, they must harvest close to three times the resources.

Finally, on the issue of safety, NOAA Fisheries conclusion that the preferred alternatives will have a significantly positive effect on vessel safety is no more than hopeful conjecture. Boats will still take a load of pots out and bring a load back in, which is when most sinkings occur. Crew will still be working in the most hostile environment in the world and they will be active longer. Red Crab 2003 saw one tragic fatality- a twenty five year veteran crabber on the nicest day of the season.

In summery, the DEIS has neglected to fully flesh out the economic hardship that clearly singles out the participants who risk the most and depend almost exclusively on this resource. Fully half out of work, those fortunate enough to work will have virtually no leverage to keep or protect their jobs. The minimal 3% C shares could be made earn less effective by an A/B designation, under leasing arrangements crew will fish longer for much less and the best any of the guys wearing raingear can hope for, is that they don't get killed or maimed.

Thank you,
Sincerely,

Barney Olsen – F/V Bella K

Coleman Anderson – C/P Pavlof

SKIPPERS FOR EQUITABLE ACCESS

101 Nickerson Suite 340
Seattle, WA. 98109

James W Balsiger
Administrator
Alaska Region, NMFS
P.O. Box 21668
Juneau, Alaska 99802

Dear Dr. Balsiger,

I am writing you to express some concerns Skippers for Equitable Access (SEA) has regarding the NPFMC Bering Sea Crab Rationalization Program Draft Environmental Impact Statement (DEIS). There are two main areas of concern for us, first is the nature of C shares and the time frame in which the impacts of that nature is evaluated and the second is the issue of royalty fees paid for quota shares and how their cost will impact skippers and crews earning potential.

Under section 4.6.3 which discusses the potential effects of the program on captains and crew the DEIS states that: *“The ability of holders of C shares to use those shares for negotiating leverage will be limited by the requirement of those shares to be subject to the 90/10 A share/B share division in the third year of the program. Since C share holder allocations will require landing of the shares with the holder of processor shares, the captain will need to displace not only another captain but also a harvest share holder in order to move to a new position. The need for such a displacement limits the use of C shares as negotiating leverage since the threat of a C share holder to walk away from a position is dependent on the existence of another person on a vessel that delivers to a processor with uncommitted processing shares. So, C shares provide their holders with an allocation of little value for negotiation but which can (be) divested when leaving a fishery or moving between positions.”*

SEA feels that C shares should not be constrained after the initial three years since we agree with the above analysis and believe that such constraint will both undermine the C share holders value to the operation and make it nearly impossible to move freely within the fleet. We feel it is extremely important for the Council to look at the nature of C shares before they automatically default to the A share/B share regionalized split after three years. We suggest that an appropriate time to evaluate the nature of C shares would be 18 months after implementation, at the same time the Council looks at the effects of IPQ's and arbitration on price as outlined at the February Council meeting in Anchorage.

The second area that SEA feels the EIS needs to address is the costs of royalty fees paid for quota shares (both initial allocation and leased or purchased quota shares) and their impact on the income of skippers and crew. We feel that discussion of royalties

and their impacts has not been adequately addressed in the DEIS. The potentially significant impact royalty costs, especially on quota initially allocated to vessels, could have on the vessels gross stock and therefore the earning potential of the captain and crew needs to be addressed in the final EIS.

Sincerely,
Tom Suryan
President, SEA
(206)522-1249 ph
(206)525-7311 fax
tomsuryan@aol.com

Kevin Suydam
PO Box 980
Kodiak, Alaska 99615

James W. Balsiger, Administrator
Alaska Region, NMFS
P.O. Box 21668
Juneau, Alaska 99802-1668

May 2, 2004

Re: Public Comments for Crab EIS

Dear Mr. James Balsiger,

My name is Kevin Suydam, Owner Operator of four BSAI Crab Vessels in the Crab Rationalization Program. I have testified at nearly every North Pacific Fisheries Management Council meeting involving Crab Rationalization. I am writing the following as my public review comments for the Environmental Impact Statement (EIS). These fall under the social and economic impacts that will affect my business and livelihood.

The Congressional Action of the Crab Rationalization Program is unusual as it pre-empts the normal Fisheries Management procedural process. But, this Congressional Crab Rationalization action still allows for changes that are corrective in nature. Because of this unusual pre-emptory Congressional action, greater flexibility should be allowed for modifications that are corrective for Social and Economic reasons, but doesn't necessarily change the intent of the Crab Rationalization Program. For example:

1. The NMFS General Counsel has stated at various NPFMC meetings that crab fishing history up until the time of the NPFMC final action should be considered. I had testified repeatedly at NPFMC Meetings on this point, yet the NPFMC has not taken in consideration the years beyond 2000. By the time of implementation of Crab IFQ's, some of the fishing history years proposed will be back-dated to 10 years ago. This could reward latent and stale history, or vessels that no longer participate.
2. The Halibut "Alliance against IFQ's" court decision stated that fishing history up until final action should be considered as well. The Crab Fisheries have more reason than Halibut to consider fishing history up until final action. Unlike the Halibut stocks which were and still are relatively constant, the Crab stocks are more cyclical with huge fluctuations in Quotas from year to year. Some of the proposed years for Crab fishing histories may never again see those huge Quotas in the years that were chosen.
3. The Aleutian Island Golden King Crab fishery was not allowed to drop a year in it's calculation for Quota Shares. This is discriminatory to

most Golden Crab Vessels, as it favors the select few Vessels that already have excessive shares.

While the above issues have the greatest negative impact on my vessels, there are other items that will cause my vessels and livelihood to suffer financial losses. These are the mandated Processor shares that will no longer allow competitive prices. Another is the mandate requiring my vessel to deliver to seaports that are no longer financially viable for us to do so.

Respectfully Submitted,

Kevin Suydam

MUNDT MACGREGOR L.L.P.
A T T O R N E Y S A T L A W

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May 3, 2004

Dr. James W. Balsiger
Alaska Regional Administrator
National Marine Fisheries Service
Post Office Box 21668
709 West Ninth Street, Number 420
Juneau, Alaska 99801

SENT VIA E-MAIL

Re: Comments on Draft Environmental Impact Statement for Bering Sea
and Aleutian Islands Crab Fisheries

Dear Dr. Balsiger:

We submit the following written comments on the Draft Environmental Impact Statement for Bering Sea and Aleutian Islands Crab Fisheries (the "DEIS") on behalf of the City of Kodiak, Alaska.

Introduction and Background

The City of Kodiak is a fishing community that consistently ranks among America's top three seafood ports in terms of ex-vessel value. Kodiak's economy relies heavily on the seafood harvesting and processing industries. Kodiak has the largest resident fishing fleet in Alaska and has the largest resident population of seafood processing workers. Given Kodiak's substantial dependence on the seafood harvesting and processing industries, Kodiak is extremely concerned about the impacts that the proposed crab rationalization plan will have on its community, in terms of both employment and overall economic health.

The allocation of individual quotas of any type will result in a transfer of public property to the private sector. As such, the public owners should be given the opportunity to understand the impacts of such an allocation on the people, industries, and communities that will be directly affected by the allocation. Likewise, such information should be available to policy makers before they are required to make a decision with

respect to such a transfer to the private sector. The DEIS does not adequately address the probable impacts that the preferred alternative will have on the City of Kodiak. Because the agency has omitted critical information from the DEIS, the DEIS does not provide meaningful analysis of expected or possible quantitative community impacts. As a result, the City of Kodiak, as well as members of the public and the North Pacific Fishery Management Council (the "Council") itself, have been unable to adequately comprehend the likely economic impacts of crab rationalization on affected communities.

The City of Kodiak recognizes that Congress has essentially directed the agency to implement the preferred alternative adopted by the Council in June 2002. However, a brief summary of Kodiak's position with respect to the preferred alternative in general, and the program's community protection measures in particular, will provide the agency with a useful perspective from which to consider Kodiak's comments on the DEIS.

Kodiak opposes the creation of Individual Processor Quotas ("IPQs"). Kodiak believes that the issuance of IPQs will result in substantial losses in employment and revenues for the community. In addition, the choice of IPQ qualifying years does not accurately reflect the historical average of Bering Sea crab processed in Kodiak. As a result, Kodiak expects that the volume of crab processed in Kodiak after crab rationalization is implemented will decline. Kodiak conducted a preliminary analysis on the expected loss in local Bristol Bay red King crab processing that is likely to result under the preferred alternative. Under the preferred alternative, the allocation of IPQs for Bristol Bay red king crab is based on three years of processing activity from 1997 through 1999. For the past four years (2000 through 2003), Kodiak processors have outperformed their relative activity during the qualifying period by as much as 300 percent. The preliminary analysis thus revealed that Kodiak would lose somewhere between \$3 million and \$10 million per year in revenues to the community and lost fish taxes if the preferred alternative is implemented. Kodiak also remains concerned that the ratio of A-share and B-share allocations of IPQs will negatively impact the residents of Kodiak to a degree that the Council neither intended nor expected.

Kodiak has urged the Council to consider a range of community protection measures that would mitigate the adverse social and economic impacts associated with the three-pie voluntary cooperative alternative (the "Three-Pie Alternative"). The range of community protection measures supported by the City of Kodiak included making Kodiak an "open port," allowing Kodiak-based vessels to deliver crab to Kodiak free of IPQ

landing requirements, and allowing Kodiak-based vessels to deliver their "last load home" to Kodiak processors without IPQ restrictions. While the Council ultimately rejected each of these protections, the program adopted by the Council does include community protection measures that would grant a "right of first refusal" to and establish a "cooling off" period for certain eligible communities. At this stage, Kodiak's central concern with respect to the community protection measures included in the preferred alternative lies in the fact that Kodiak has no assurance that it will benefit from these protections.

Kodiak strongly supports the Council's recent decision to examine the effects of the 90/10 A-share/B-share split and the binding arbitration program 18 months after fishing begins under the program. Kodiak also commends the Council's decision to reconsider, at that time, whether some other A-share/B-share split is appropriate in order to achieve the intended effects of the program. Kodiak believes that the Council's willingness to reconsider this critical element of the program could prevent the irreparable and unintended harm to the community that Kodiak expects will result from the implementation of the preferred alternative. Accordingly, Kodiak encourages the Council to maintain rigorous oversight during the initial stages of program implementation on the impacts that the program has on communities like Kodiak who are not receiving a percentage of IPQs commensurate with their historic crab processing participation.

Although Kodiak is generally satisfied with the Council's decision to revisit these elements of the program after program implementation, Kodiak nonetheless believes that certain critical issues must be addressed at the EIS-stage of the process. Kodiak has thus limited its comments on the DEIS to two discrete issues. First, Kodiak asserts that the community protection measures included in the DEIS are inadequate because the DEIS does not indicate whether or not Kodiak will be eligible for proposed protections. Second, Kodiak objects to the range of alternatives included for analysis in the DEIS; specifically the DEIS's failure to consider an alternative under which a portion of harvesting quota shares would be reserved for eligible processors in lieu of IPQ allocations.

Inadequacy of Community Protection Measures

As mentioned above, Kodiak expects that the adoption and implementation of the three-pie program will have significant adverse impacts on the residents of its community. Four of the top five employers in Kodiak in 2000 were fish processors, and

three more were listed in the top 20 employers.¹ In 2000, Kodiak processed 5.9% of the total harvest of relevant BSAI crab species.² The location of crab processing is of critical importance to the communities involved in BSAI crab fisheries. Each community within which crab is processed receives fishery taxes, other local taxes, and stimulation of the local economy through supply of utilities, support services, and other economic multiplier effects. Therefore, disclosure of the expected or possible changes in the location of crab processing activity is necessary in order to understand the social and economic impacts of management alternatives. As recognized in the DEIS, the expected consolidation of processing shares following allocation will result in a number of impacts on affected communities.³ The preferred alternative proposes to minimize these adverse impacts by granting "community protection measures" to communities with three percent or more of the qualified landings in any crab fishery included in the program.⁴ The community protection measures consist primarily of a "cooling off" period and a right of first refusal, both of which are designed to limit and/or prevent the movement of processing shares from affected communities.

Ironically, because the amount of Processor Quota Shares ("PQS") that Kodiak-based processors will receive under the preferred alternative is small, as compared to Kodiak's long-term historical average of crab processing activity, these community protection measures, while benefiting communities like Dutch Harbor and St. Paul, will actually work to the disadvantage of communities like Kodiak. Kodiak strongly believes that it would regain, and perhaps even exceed, its historical average of Bering Sea crab processing activity, so long as it is given the opportunity to compete among other communities in attracting this processing activity. The allocation of PQS significantly impairs the opportunity for this competitive activity to occur. The community protection measures further stifle competition by preventing communities like Kodiak from competing to attract new processing activity after PQS are allocated. Thus, rather than offering "protection" to Kodiak, the right of first refusal and "cooling off" period provisions will directly impair Kodiak's efforts to regain and maintain a level of crab processing activity in its community that is commensurate with its historical participation

¹ DEIS, Appendix 3, North Pacific Fishery Management Council Crab Rationalization Social Impact Assessment, at 189 (May 2003).

² Id. at 198.

³ DEIS, at 4-200.

⁴ Id.

in this industry. On balance, Kodiak would likely be better off competing with other communities to attract crab processing activity, rather than having a guaranteed ability to retain the relatively small allocation of PQS that would be allocated to Kodiak-based processors.

The only offsetting community protection measure included in the preferred alternative which in any respect might benefit Kodiak is the "GOA First Right of Refusal provision." This provision would give certain Northern Gulf of Alaska communities with at least three percent of the initial PQS allocation of any BSAI crab fishery a right of first refusal to purchase PQS which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area. Without the benefit of this community protection measure, the City of Kodiak would not receive any benefits from the community protection measures included in the preferred alternative. Unfortunately, as discussed below, Kodiak has no assurance that it will be eligible to receive the benefit of even this measure.

Although the overall structure of the community protection measures included in the preferred alternative will not provide Kodiak with adequate protections, and will actually work to Kodiak's disadvantage, the City of Kodiak understands that the Council and NMFS intend to move forward with this approach. With this understanding in mind, Kodiak strongly believes it should be eligible for the community protection measures included as part of the preferred alternative, given its historical involvement in and growing dependence on the BSAI crab processing industry. Kodiak understands that when the Council adopted the preferred alternative, it intended that Kodiak benefit from the program's community protection measures, including the GOA First Right of Refusal provision. However, the DEIS does not provide baseline information for crab processing on a community basis. Although historic crab processed weights are a matter of agency record, and have been used by the agency to determine projected IPQ allocations, "due to confidentiality restrictions," the DEIS does not disclose six of the eight communities that would be eligible for the preferred alternative's community protection measures.⁵ The City of Kodiak is not one of the two listed eligible communities.

The City of Kodiak's uncertainty about whether or not it will receive the benefit of the community protection measures included in the preferred alternative makes

⁵ Id.

it extremely difficult for Kodiak to make accurate predictions, or submit meaningful comments, on the social and economic impacts that Kodiak will face if the preferred alternative is implemented. Since Kodiak is not a named community, it is impossible to know with certainty whether or not Kodiak will be afforded at least the modicum of protection offered by the ability to use the right of first refusal for sales of PQS outside of the community. Likewise, as the largest crab processing community within the Northern Gulf of Alaska, Kodiak is equally unable to determine if it is eligible for the GOA first right of refusal protections. In response to concerns that the City of Kodiak has raised in this regard, the Council requested that NOAA General Council clarify the scope of the applicable confidentiality restrictions and revise the analysis in the DEIS, to the extent permitted by these restrictions, to show the implications of the program's processing allocations relative to community protection measures under the program. NOAA General Counsel recently issued a legal opinion concluding that the confidentiality restrictions imposed by Section 402(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act make it impossible for the DEIS to specify which communities would be eligible for the community protection measures included in the three-pie alternative. Therefore, the agency has been unable to revise the analysis in the DEIS to reveal the implications of processing allocations relative to community protection measures.

To ensure that the City of Kodiak receives an opportunity for meaningful participation in the EIS process, Kodiak is requesting that the Council amend the preferred alternative at its June 2004 meeting to specifically name the City of Kodiak as a community that will benefit from the community protection measures included in the preferred alternative. Kodiak would also encourage the Council to name the other communities that the Council intended to protect when it adopted the community protection measures included in the preferred alternative. Specifying the City of Kodiak and other communities as intended beneficiaries of the community protection measures at this stage of the process will provide Kodiak and other communities with a greater degree of certainty and a heightened ability to predict and plan for the social and economic impacts that will result upon implementation of the program. Naming the intended beneficiaries of the community protection measures will not require the disclosure of confidential data, and will not affect the analysis contained the DEIS, as all communities with three percent or more of the qualified landings in any crab fishery in the program would remain eligible to benefit from the community protection measures. We believe that this minor technical amendment to the Council's motion will provide Kodiak and other communities with

needed assurances regarding their potential exposure upon implementation of the preferred alternative. Given the fact that this technical amendment would not create a need for the agency to supplement or amend the DEIS, or to engage in any further analysis, Kodiak strongly encourages the Council to consider and adopt such an amendment.

Inadequacy of Range of Alternatives Considered

The National Environmental Policy Act ("NEPA")⁶ and its implementing regulations require federal agencies to present the environmental impacts of the proposal and its alternatives in comparative form and to "[r]igorously explore and objectively evaluate all reasonable alternatives."⁷ The consideration of reasonable alternatives lies at the "heart" of the EIS.⁸

In this case, the agency should have considered a reasonable alternative that would reserve a portion of harvesting quota shares to be allocated to the processing sector in lieu of issuing IPQs (a "Modified One-Pie Alternative"). As recognized in the Minority Report of the Advisory Panel minutes from the April 2002 Council Meeting, an analysis focused only on a strict IFQ system, a complete IFQ/IPQ system, or a cooperative system has the effect of polarizing interested parties and limiting the agency's ability to adequately consider and address the concerns of the range of individuals and communities that will be affected by the program. By focusing solely on three extreme alternatives, with no options in between, the DEIS has failed to consider an alternative that would allow for the distribution of the benefits and harms associated with the program across the various sectors in a more fair and equalized manner.

The Modified One-Pie Alternative is neither speculative nor remote. The Modified One-Pie Alternative would speak to all of the policies that the crab rationalization program is intended to address, and would significantly curtail the adverse social and economic impacts associated with the creation of IPQs. As recognized by a State of Alaska economist, the Modified One-Pie Alternative would provide protection to the processing sector. In addition, the Modified One-Pie Alternative would offer

⁶ 42 U.S.C. §§ 4331-4332.

⁷ 40 C.F.R. § 1502.14(a).

⁸ 40 C.F.R. § 1502.14.

substantial benefits in comparison to the Three-Pie Alternative. Because the Modified One-Pie Alternative is similar to current rationalization programs, its results are more predictable, and would allow the agency to reduce the potential for unintended consequences.

In explaining the agency's decision not to consider the Modified One-Pie Alternative, the DEIS states:

The Council chose not to advance a program that would allocate harvest shares to processors primarily because the Council believed that processor interests could be most equitably protected by providing direct protection to processing activity. In addition, the allocation of harvest shares to processors was thought to potentially dilute of [sic] harvest allocations to harvesters and to cause possible complications that could arise from the allocation of harvesting shares to processors that do not engage in harvesting.⁹

This explanation does not lead to the conclusion that the Modified One-Pie Alternative falls outside the range of "reasonable" alternatives. Using the above-quoted rationale, the agency could have similarly rejected *any* possible alternative on the grounds that a different alternative would allow for "more equitable protection" of the interests of a given sector. Similarly, a dilution of harvest allocations to harvesters would in many respects be preferable, from the standpoint of the harvesting sector, to the creation of IPQs. Thus, the Modified One-Pie Alternative's potentially adverse effects on the harvesting sector do not provide a rational ground for rejecting the consideration of this alternative. Further, the DEIS's vague reference to unspecified "complications that could arise" in connection with the allocation of harvesting shares to processors who do not engage in harvesting provides no rational basis for the agency's decision to reject the consideration of this alternative. Accordingly, Kodiak objects to the exclusion of the Modified One-Pie Alternative from the range of alternatives considered in the DEIS.

⁹ DEIS, at 2-91.

Dr. James Balsiger
May 3, 2004
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Conclusion

In sum, the City of Kodiak is very concerned about the social and economic impacts that will accompany the implementation of the preferred alternative. While Kodiak commends the Council's decision to re-consider critical elements of the preferred alternative 18 months after the program is implemented, Kodiak believes that two important issues require immediate action on the part of the Council and the agency. First, a Council Motion that identifies Kodiak as an intended beneficiary of the community protection measures included in the preferred alternative is required in order to provide Kodiak with an opportunity for meaningful participation in the EIS process. Second, in order to comply with NEPA's requirement that the agency consider all reasonable alternatives, the DEIS should be amended to include a consideration of the Modified One-Pie Alternative.

We appreciate your consideration of these comments.

Very truly yours,

MUNDT MacGREGOR L.L.P.



Joseph M. Sullivan

JMS:emb

cc: City of Kodiak (via fax)
Ms. Stephanie Madsen, Chair,
North Pacific Fishery Management Council (via fax)
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May 3, 2004

Dr. James W. Balsiger
Alaska Regional Administrator
National Marine Fisheries Service
Post Office Box 21668
709 West Ninth Street, Number 420
Juneau, Alaska 99801

SENT VIA E-MAIL

Re: Comments on Draft Environmental Impact Statement for Bering Sea
and Aleutian Islands Crab Fisheries

Dear Dr. Balsiger:

We submit the following written comments on the Draft Environmental Impact Statement for Bering Sea and Aleutian Islands Crab Fisheries (the "DEIS") on behalf of Pacific Star Fisheries, LLC ("Pacific Star Fisheries").

Pacific Star Fisheries' comments relate to Appendix 2-1 of Appendix 1 of the DEIS. The Appendix contains a table entitled "Eastern Aleutian Islands (Dutch Harbor) golden king crab qualified catcher-processors."¹ The table indicates that no catcher-processors operated in that fishery in the 1996-1997, 1997-1998, 1998-1999, and 2000-2001 seasons.² According to Pacific Star Fisheries' records, the vessel SEAWIND was employed as a catcher-processor in the Eastern Aleutian Islands (Dutch Harbor) golden King crab fishery in 1997 and 1998. On the basis of its operations, we anticipate that crab license limitation program license number LLC4857 (issued based on the combined fishing histories of the F/V SEAWIND and the F/V AMERICAN EMPIRE) should result in an allocation of catcher-processor shares for the Eastern Aleutian Islands (Dutch Harbor) golden King crab fishery under the preferred alternative.

¹ Appendix 2-1 of Appendix 1, *Regulatory Impact Review*, at 9.

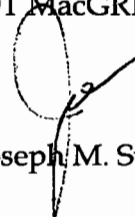
² *Id.*

Dr. James Balsiger
May 3, 2004
Page 2

We appreciate your consideration of these comments.

Very truly yours,

MUNDT MacGREGOR L.L.P.



Joseph M. Sullivan

JMS: emb

cc: Pacific Star Fisheries, LLC
NOAA Office of Strategic Planning

May 3, 2004

Dr. James W. Balsiger, Alaska Regional Administrator
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

RE: Draft Environmental Impact Statement for Crab Rationalization

Dear Dr. Balsiger:

Thank you for this opportunity to submit comments on the Crab Rationalization Draft Environmental Impact Statement analysis and alternatives.

Purpose of EIS

Comment 1 - Purpose of EIS

The abstract of the EIS states:

“It is intended that this Environmental Impact Statement serve as the central environmental document for the National Marine Fisheries Service and the North Pacific Fishery Management Council to make a decision on which alternative to implement.”

The Executive Summary of the Crab EIS further states on page ES-1:

“The purpose of this Environmental Impact Statement (EIS) is to provide decision-makers and the public with an evaluation of the environmental and economic effects of alternative management programs for the Bering Sea and Aleutian Islands (BSAI) crab fisheries.”

These statements are misleading. They suggest that there is a decision yet to be made based on the four alternatives described on page ES-3. Nowhere in the Executive Summary is the reader informed that the decision has already been made by Congress, and that the hands of the Secretary of Commerce are bound by that legislation.

Recommendation 1 - Purpose of EIS

The Executive Summary should begin with a disclaimer notifying the public that the ‘decision-makers’ have acted prior to the release of this EIS to the public, and that there are no choices to be made amongst the four alternatives.

Comment 2 - Purpose of EIS

The ‘description of alternatives’ beginning on page ES-2 states that:

“...the Council examined a myriad of suboptions under each management component. However, it is not practical to construct an EIS that considers the environmental and economic consequences of every permutation of suboptions considered by the Council during the entire public process of developing a preferred alternative.”

It is unclear based on this description of alternatives and the fact that there is only one real alternative (see comment 1) whether there are any decisions to be made based on this EIS. However, Sec. 801 Crab Rationalization legislation does provide that certain modifications and refinements of the elements of the program may be made, consistent with the MS-FCMA:

- 1- if such trailing amendments are approved by Jan. 1, 2005
- or -
- 2- a trailing amendment is approved subsequent to full implementation.

Recommendation 2 - Purpose of EIS

The Executive Summary should make explicit what decisions can be made based upon this document and whether any of the suboptions related to alternative 2 and contained in the appendices are ‘live’ decision points.

Comment 3 - Purpose of EIS

Section 1.8 on page 1-22 of Chapter 1 lists the relevant federal laws. Conspicuously absent from the list of such laws is the Section 801 appropriations legislation that pre-empted the decision to be made under this EIS.

Recommendation 3 - Purpose of EIS

Include a discussion of the Sec. 801 Crab Rationalization legislation in this section.

Comment 4 - Purpose of EIS

Page 2-35 of Chapter 2 states:

“Alternative 2 would also create a processor quota share program for processors, which would limit access to processing. Since limiting access to processing activity is currently not authorized under the Magnuson-Stevens Act, it can not be a component of the FMP. However, Congress may decide to authorize limiting access to processing through processor quota shares.”

Unfortunately, this statement is out of present time and inaccurate. The decision was made, though it was not made through a process that involved a floor debate or vote on the merits of the decision.

Recommendation 4 - Purpose of EIS

Correct this sentence by changing “may decide” to “has decided without an explicit floor vote on the merits, through the appropriations conference committee process.”

Binding Arbitration

Comment 5 – Binding Arbitration

The description of Alt. 2 on page ES-3 states:

“The novelty of the program has compelled the Council to include several safeguards into the program, including a binding arbitration program for the resolution of price disputes, extensive data collection, and a program review to assess the success of the program.”

The August 27, 2003 DOJ letter in Appendix 2 concludes:

“Based on the competition and antitrust law concerns that we have discussed, we urge NOAA to request that the Council develop a rationalization plan that does not include IPQ or arbitration.”

The Council has acknowledged that they have recommended a program which requires binding arbitration as a mitigation measure, yet the DOJ which has the most expertise in the field has urged that a rationalization plan not include arbitration based on antitrust concerns.

As the February 2004 SSC minutes note, it is the threat of Binding Arbitration that is really important. However, a threat is only meaningful if it is credible.

The analysis in section 4.6.7.3 on pages 4-224 & 4-225 is inadequate to evaluate the credibility of the threat. Any other information must be gleaned from the appendices. This is an inadequate treatment of a feature of the program that is so critical.

Recommendation 5 - Binding Arbitration

The analysis of the binding arbitration in section 4.6.7.3 must be enhanced to deal with the questions of legality, efficacy, and functionality.

Comment 6 - Binding Arbitration (legality)

Sec. 801 (j) (6) of the crab legislation states:

“Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States.”

The August 27, 2003 DOJ letter also states:

“Thus, it is possible that all harvesters in a cooperative could lose their Capper-Volstead immunity if the cooperative and non-member harvesters agreed to participate in binding arbitration with the same processor.”

“The Department urges NOAA to oppose the proposed non-binding and binding arbitration. The proposed arbitration could be used to facilitate price fixing agreements, and participants in the arbitration who are not immune from the antitrust laws because of membership in a FCMA cooperative could be in violation of those laws.”

The issues highlighted by the DOJ should cause harvesters to question the legal wisdom of participating in the binding arbitration program. If harvesters are afraid to utilize the program, it then fails to provide a credible threat.

Recommendation 6 - Binding Arbitration (legality)

Section 4.6.7.3 should address the issue of the legal risks to harvesters as identified in the DOJ letter, and how that will undermine the credibility of the threat provided by binding arbitration.

Comment 7 - Binding Arbitration (efficacy)

The August 27, 2003 DOJ letter also states:

“Arbitration is not a substitute for market forces and may distort the incentives of processors and harvesters to make efficient investments. It is also unwieldy and complex, and thus subject to manipulation or significant error.”

Recommendation 7 - Binding Arbitration (Efficacy)

The EIS should provide additional clarity on whether the issues raised in the DOJ letter of Aug. 27, 2003 will impact the intended function of Binding Arbitration as a surrogate for competition in price formation.

Comment 8 - Binding Arbitration (efficacy)

The “Update of BSAI Crab Rationalization Report to Congress April 2003,” page 3, states:

“Because of the completed analyses of these different structures, an alternative structure, such as the “Steele Amendment,” could be expeditiously adopted as part of the binding arbitration program should Council review of the program suggest that the arbitration program is not working as intended.”

This statement is probably inaccurate given that the legislation provides in Sec. 801 (j) (2), that,

“Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph.”

The exemption to the provision of the MSFCMA (the “Act”) only applies to the specific binding arbitration program in the report to Congress. It doesn’t provide carte blanche to the Council to adopt a different binding arbitration program alternative. This fact, combined with the warnings from DOJ of inherent legal concerns with binding arbitration and Sec. 801 (j) (6) which clarifies that the legislation doesn’t create antitrust waivers, severely limits the ability of the Council to modify the binding arbitration program in the event it does not prove effective.

Recommendation 8 - Binding Arbitration (Efficacy)

This issue should be included in the discussion in 4.6.7.3 in the context of analyzing the credibility of the threat of binding arbitration and the need for an alternative method of achieving competitive pricing.

Comment 9 - Binding Arbitration (Functionality)

It is critical to the functioning of Binding Arbitration that the arbitrator has access to good verifiable data. However, it is not clear that there is an interface between the Binding Arbitration program and the Mandatory Data Collection program under Sec. 801 (j)(1) or with the Federal Trade Commission data program under (j)(6) of the crab legislation.

As noted on page 21 of the Council’s Aug. 5, 2002 letter to Congress:

“Because other laws may also prohibit the Council and NOAA Fisheries from collecting these data, it may be appropriate to include a general statement that the authority and requirement to collect these data would supercede other Federal laws that may be in conflict.”

Sec. 801 dealt with prior MS-FCMA constraints on data in (j) (1), but it did not address other Federal laws that may be in conflict.

Recommendation 9 - Binding Arbitration (Functionality)

This issue should be addressed in the discussion in 4.6.7.3. The statutes limiting the interface between the Data Collection programs and the use of those data by the Binding Arbitration program need to be identified.

The EIS should provide additional clarity on whether the Mandatory Data Collection program itself can be fully implemented given that Sec. 801 (j) (2) only waived MSFCMA restrictions.

Comment 10 - Binding Arbitration

Given the forgoing issues, it is unlikely that binding arbitration is a “credible threat” or that it will serve as a surrogate for a competitive market. This is implicitly recognized in the last paragraph of section 4.6.7.3 which identifies an alternative approach of reducing the 90/10 ratio of A/B shares.

Recommendation 10 - Binding Arbitration

As a mitigation measure for the problems identified by DOJ, the Council and the Secretary of Commerce should immediately revise the A/B share ratio within alternative 2 to 50/50.

Excessive Shares

Comment 11 – Excessive (IFQ) Shares

Table 2.2-2 on page 2-43 provides the ownership cap levels of 1% for individuals such as harvesters, and 5% for CDQs, but the table does not specify ownership caps of harvest shares for processors.

The text at the top of page 2-43 also states:

“These caps are intended to prevent excessive consolidation of shares under the program.”

The text below the table states:

“Processor holdings of harvest shares would also be limited by caps on vertical integration. A processor’s ownership of QS is limited to 5 percent of the QS pool on a fishery basis. These caps are applied using a threshold rule for determining whether the shares are held by a processor and then the individual and collective rule for determining the extent of share ownership. Under the threshold rule, any entity with 10 percent or more common ownership with a processor is considered to be a part of that processor. Any direct holdings of those entities would be fully credited to the processor’s holdings. Indirect holdings of an entity would be credited toward the processor’s cap in proportion to the entity’s ownership. The rules for applying the caps on vertical integration are thought to be more appropriate for limiting consolidation of harvest shares by processors. The vertical integration cap would exempt only the primary processing corporate entity from any general cap on QS and IFQ holdings. All persons, subsidiaries, and affiliates would remain subject to the general caps on harvest share holdings. Initial allocations of shares above the cap would be grandfathered.”

The six CDQ groups could own 30% of the harvest shares under this provision (presumably this is in addition to the 10% direct CDQ allocation.) It appears from my reading of the text that each of the processors can own 5% of the harvest shares. If 10 processors took advantage of this provision, then they could hold 50% of the harvest

shares. This would leave as little as 20% of the harvest quota available to the 200 independent harvesters.

It appears that the intent of the program is to eliminate independent harvesters.

Recommendation 11 - Excessive (IFQ) Shares

The intent of preventing excessive consolidation is undermined by allowing individual processors to hold greater amounts of harvest shares than individual harvesters. This should be identified as an explicit suboption that can be modified during the Council's and the Secretary's review of the preferred alternative.

The Secretary of Commerce should not approve this provision that blatantly discriminates against independent harvesters. The excessive harvest share cap should be set equally for all entities, particularly processors, at one percent.

Comment 12 – Excessive (IPQ) Shares

Page 2-43 makes the statement regarding harvest shares:

“These caps are intended to prevent excessive consolidation of shares under the program.”

As noted above, the intent seems limited to ensuring that harvesters can't consolidate amongst themselves, rather than preventing excessive holding of harvest shares by processors. However, the intent of processor excessive share caps and use caps is even more ambiguous.

Page 2-46 states that the excessive share caps are 30% for IPQs, while there are no use caps in any fishery, except for the 60% limit in north region opilio.

Trident has just acquired Norquest, which adds to the consolidation in the processing sector. Presumably this is consistent with the unstated intention of the program to encourage consolidation of processing shares for processors, and to encourage consolidation of harvest shares by processors, while discouraging consolidation of harvest shares by independent fishers.

Though this encouragement of processor consolidation may be consistent with their intent, it is inconsistent with the purpose and needs statement that speaks to promoting “healthy, stable and competitive markets.” Unconstrained consolidation leads to oligopsony, if not monopsony, which can only exacerbate the inherent anti-competitive nature of IPQs

Recommendation 12 - Excessive (IPQ) Shares

The Council and the Secretary should approve by January 1, 2005, and implement a subsequent program amendment to modify the processor share caps and use caps. In

order to set caps at a reasonable level the analysis should indicate what the initial allocations of IPQ will be by processor. Additionally, the revised IPQ limits should be based on the June 2002 date when the Council indicated its preferred alternative.

IPQs

Comment 13 - IPQs

IPQs are a bad idea. The purposes to be served by IPQs can be addressed by other means.

Again, the August 27, 2003 DOJ letter concludes:

“Based on the competition and antitrust law concerns that we have discussed, we urge NOAA to request that the Council develop a rationalization plan that does not include IPQ or arbitration.”

One identified purpose of IPQs/A-shares is to serve as a mechanism for regionalization. This is not a valid excuse for adopting IPQs, since B shares could as easily serve as a vehicle for regionalization.

Another purpose ascribed to IPQs is to compensate processors for their non-malleable capital investments. However, nothing in the EIS analysis provides any meaningful measure of the magnitude of crab specific processing capital whether malleable or non-malleable. Neither does it provide a means of comparing the degree and magnitude of crab specific non-malleable capital between the processing and harvesting sectors. Nor, does the analysis provide a basis for measuring the expected impact on ex-vessel prices of an IPQ relative to a non-IPQ rationalization program to assess how much compensation is being provided to processors through the creation of processor quotas.

As the Feb. 2004 SSC minutes state:

“The entire theoretical justification of using processor quotas to protect existing processors is to provide compensation to processors during the period (*short run*) when their capital is non-malleable.”

The original RIR provided pointed out that quantitative analysis of the impact of different A/B share splits was impossible. As a result there were only a handful of pages of qualitative discussion in RIR that allowed the 2002 Council to evaluate the impact of different splits. However, what was clear from the paper prepared for the NPFMC by Milon and Hamilton, “A Comparative Analysis of Alternative Rationalization Models for the Bering Sea/Aleutian Islands Crab Fisheries,” was that harvest shares are worth less and IPQs are worth more as the ratio of A shares to B shares increases.

Ultimately the original RIR, EIS, and any new analysis of A/B share ratios all boil down to this:

A ratio of 0%/100% A/B split is best for fishers.

A ratio of 100%/0% A/B split is best for processors.

At each incremental increase of A shares between 0% and 100% in the A/B split, the benefits are being increased for processors and decreased for harvesters.

Recommendation 13 - IPQs

The Council and the Secretary should approve by January 1, 2005, and implement a subsequent program amendment to modify the A/B share split. Additionally, all A shares re-designated as B shares should retain their regional designations.

The analysis of this trailing amendment should tier off the EIS and the RIR/IRFA/SIA appendices.

Conclusion

Comment 14 – Talking to the Wall

It is unfortunate that this EIS does not serve the purpose of NEPA – that of providing “decision-makers and the public with an evaluation of the environmental and economic effects of alternative management programs.” Despite so much time and effort by staff, absent a time machine, the trees used to produce the document would have better been turned into so much excelsior.

None the less, in order to help perpetuate the fiction that there is a decision-maker out there, i am attaching the comments of the C.R.A.B. Group submitted to the hearing by the Senate Commerce Committee on Crab Rationalization in May of 2004 when there was a chance that the real decision makers (Congress) would make vote on the merits of the proposal or provide the Council and the Secretary with the latitude to make such decisions in the framework of a normal NEPA/MS_FCMA decision making process.

Recommendation 14 – Talking to the Wall

Recognize that NEPA is form, not substance and announce this in a cover letter for the Crab Rationalization EIS.

In an alternative universe, the attached comments are my real substantive comments to the decision maker.

Thank you for your consideration of these comments.

dave fraser

Captain, FV Muir Milach
PO Box 771
Port Townsend WA 98368

Attachment:
Testimony 5-20-03.pdf

TESTIMONY OF

DAVID FRASER

CAPTAIN, FV MUIR MILACH

CRAB RATIONALIZATION AND BUYBACK GROUP

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

HEARING ON BS/AI CRAB RATIONALIZATION AND PROCESSOR QUOTAS

May 20th, 2003

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Executive Summary

The CRAB Group supports rationalizing the Bering Sea/Aleutians Islands crab fisheries. The status quo system has left harvesters on or over the brink of bankruptcy, and has led to the demise of most of the non-AFA (American Fisheries Act) crab processors. Worst of all, the murderous “race for fish” in the middle of winter kills an average of five fishermen a year. We are also aware that asking Congress to overrule a unanimous Council request puts us in a difficult position.

However, we believe a fair rationalization program can be developed without resorting to Processor Quotas (PQs). Processor quotas will result in a segmented monopsony and require endless government regulatory involvement to simulate a competitive market.

It is the position of the CRAB Group and hundreds of others that Congress should reject the Council’s request for a radical expansion of its authority.

The harvester component of the crab rationalization program is legal now. It can be adopted together with the CDQ provisions, the regionalization provisions, and the skipper and crew provisions designed by the Council, but without PQs.

IFQs allocate access to a share of a public resource, which becomes private property only after it is captured. PQs grant a right or privilege to process a fixed portion of the harvest. Thus PQs direct the disposition of private property, rather than a public resource.

IFQs insure that public resources are harvested in a safe and efficient manner. PQs eliminate or restrain competition among processors and create a regulated marketplace which requires creating a substitute mechanism for price formation.

The crab rationalization process included nearly two years of committee meetings in which the various elements were crafted. Both harvesters and processors participated in these meetings. Throughout this process, the processing sector was adamant that rationalization was not going forward without processor quota. In the end all the arguments for PQ come down to this: “Our way, or no way.”

The Council spent three days debating nearly all the proposed elements. In the end it created a balanced harvester IFQ system with regional delivery requirements, skipper and crew provisions, and a balance of recent and historic participation credit.

However during this time, not a single motion was made regarding the allocation of 90% or the procession rights. There was no debate regarding the impacts of creating this system in spite of considerable testimony opposing processor quota shares.

It is our firm belief that an effective lobbying effort cannot substitute for building a low cost and effective rationalization program within the current framework of the Magnuson/Stevens Fisheries Management and Conservation Act.

National Academy of Science Recommendations

Congress should heed the advice it requested from the National Academy of Science. In the NAS report, “Sharing the Fish,” they said there was no:

“...compelling reason to establish a separate, complementary processor quota system (the "two-pie" system).”

It also noted with regard to foreign ownership:

"If there is a consistent congressional policy, it can be characterized as resistance to foreign ownership of fishing vessels and foreign exploitation of fish resources with the U.S.

The heart of the controversy over PQs is the impact on price formation. PQs destroy the harvesters' ability to benefit from collective bargaining under the 1934 Fishermen's Marketing Act.

Ninety percent of a harvester's crab must be delivered to a processor holding unused PQ. The result is a game of musical chairs which encourages harvesters to accept a sub-optimal price to avoid being the last one standing. In order to change processors, a harvester must find a new chair. Such harvesters **must** sell at a lower price than the person they are displacing in order to buy this chair. Clearly this creates a downward price spiral.

Issuance of PQs divides the market and takes competition for product out of the equation. My neighbor owns a plumbing business and has no experience with fishing, but it took him less than thirty seconds to figure out that PQs will serve one purpose well...and that fishermen will be paid less for their crab as a result.

Lower ex-vessel prices mean lower crew wages and reduced landing taxes for the State of Alaska.

The Magical 10% Solution? – B Shares

The State of Alaska's Issue Paper has states that giving harvesters 'B' shares to sell 10% of their crab on an open market will restore harvesters bargaining power and guarantee a fair price for all crab deliveries.

The Issue Paper also claim the 10% B shares allow new processors to enter the fishery and increase the share of communities like Kodiak with limited qualified 'A' share processors.

Simply asserting that a 10% of the crab can do all this doesn't make it so. Indeed, these assertions lack supporting analysis. Unless B shares are like the biblical loaves and fishes, it is impossible to believe these shares will provide enough crab to leverage price by offering them to PQ endowed processors **and** provide a pool of product for disenfranchised processors and communities.

In fact, the Council recognized 10% was inadequate and initiated a series of trailing amendments to deal with community protections and with price formation through binding arbitration.

Trailing Amendments – Binding Arbitration

PQs would segment and allocate 90% of the Bering Sea crab market. Without specific legislative permission, that allocation would constitute a per se violation of antitrust law, equivalent to price fixing. It is a "hard-core cartel agreement" that would otherwise be prosecuted criminally by the Department of Justice. This inherently anti-competitive effect of PQs is the problem that requires Binding Arbitration.

The Council Chairman appointed a committee of fishermen and processor representatives to address the issues of binding arbitration. Over several months of meetings committee developed two distinct approaches.

The Council chose the version supported by processors on a 6-5 vote. That version fails to provide a meaningful safety net. Nor does it provide assurance of an outside option approximating a competitive marketplace.

Real Time Oversight

The Council has repeatedly stated its intent to modify the program to respond to unintended or unanticipated impacts. To do so will require far broader authority than simple legislation to implement the preferred alternative. It is also naïve to imagine that some of the effects will be reversible.

Without additional authority, the Council lacks the tools required to address many of the problems that will arise. It is difficult to imagine that Congress will relish taking on the role of real-time program manager. It is also difficult to believe that additional authority should be granted outside the context of the Magnuson/Stevens Fisheries Conservation Management Act.

If Congress authorizes PQs, it will transform Councils' task from managing fisheries to managing markets. They will need the powers and experience of the National Labor Relations Board, Federal Trade Commission, Department of Justice Anti-trust Division, and Public Utility Regulatory Commissions.

Alternatives to Processor Quotas

There are many alternative approaches that have been utilized to deal with the concerns of processors in a variety of rationalized fisheries. Even without PQs, the crab rationalization plan gives processors substantial protection by program elements. These include:

- Separate Catcher Vessel and Catcher Processor classes of quota, so fishermen can't process their own crab.
- Regional restrictions on deliveries.
- Processors are allowed to acquire and own harvest quota.
- Limits on consolidation of harvest quota, preserving a diverse supply for processors.

The Council's Advisory Panel also offered a number of alternatives to PQs which didn't receive adequate consideration. If analysis did show there was further necessity to protect processors, there are less-damaging alternatives.

The American Fisheries Act provides one such workable alternative to PQs. The critical difference is that while the AFA coops provide a large measure of stability through the requirement for annual coop contracts with an eligible processor, no processor is guaranteed a fixed share of the harvest for more than one year, and ultimately it is competition that governs whether a vessel will remain with a processor or move its quota to another processor.

Legitimate processor concerns can be addressed without authorizing PQs and segmented markets.

Recommendations:

Congress should reject the Council's request for a radical expansion of its duties beyond fisheries management and into market regulation represented by the request for authorization to adopt the Processor Quota element of their preferred alternative.

If Congress does authorize PQs it is critical to do so in a manner that guarantees that improved community protections and a better binding arbitration process are accomplished first.

Introduction

The CRAB Group supports Crab Rationalization including measures to protect communities and processors. The status quo system has left harvesters on or over the brink of bankruptcy, and has already led to the demise of most of the non-AFA crab processors. Worst of all, the murderous “race for fish” in the middle of winter kills an average of five fishermen a year.

We believe a fair rationalization program can be developed without resorting to Processor Quotas (PQs) which will result in a segmented monopsony and require endless government regulatory involvement to simulate a competitive market.

Our concerns are detailed in the following discussion.

1.0 What Happened in Dutch Harbor and Why the 11-0 Vote?

The North Pacific Fisheries Management Council staff prepared a 436 page analysis for the crab plan of which just four pages were devoted to the impacts of Processor Quotas. Recognizing the controversial nature of PQs, the Council contracted outside economists Milon and Hamilton from Florida for further analysis of the impacts. These economists produced a 35 page document which highlighted the negative impacts on harvesters. Unfortunately, the Council chose to remove it from the analysis.

At the June meeting where the Council picked its preferred alternative, it passed 20 amendments (and considered many more) to the proposed plan over three days of debate on the element and options of the program dealing with the harvest sector. Not a single motion was made on the regarding the level of PQ, and so there wasn't a word of debate regarding the impacts of creating a PQ system governing the marketing of 90% of the crab.

Aside from the PQ element, the Council did an excellent job of putting together a balanced IFQ system with regional community protection, skipper and crew provisions, a reasonable balance of recent and historic participation credit, and excessive share provisions for the harvest sector. All of which could be adopted without the PQs now the IFQ moratorium has lapsed. However, the processing lobby made it quite clear throughout the process that nothing was going to happen unless and until they got processing quota. In the end all the arguments for PQ come down to this: “Our way, or no way.”

This powerful group has made it clear to everyone seeking to rationalize fisheries, that regardless of the economic cost to other non-diversified processors, fishing communities, vessel owners, or, indeed, the cost in human life for those who work in the nations most dangerous occupation, they will block any action that doesn't give them control of the harvester's market choices.

It's my opinion that the Council, tired of having blood on its hands, chose what they hoped would be the lesser of two evils. Since the Council vote last June Congress allowed the moratorium on IFQs to expire. It is now up to Congress to decide whether Processor Quotas are good policy.

2.0 Are Processor Quotas Necessary or Prudent?

2.1 National Academy of Science Recommendations

In the 1996 Magnuson-Stevens Reauthorization Congress directed the National Academy of Science to provide advice and recommendations on IFQ programs and specifically directed the evaluation of processor allocations. Section 303(d)(5) of the M-S Act directs Councils to consider the recommendations for the NAS report (Sharing the Fish).

2.1.1 "Sharing the Fish" on Processor Quota

Page 205 of "Sharing the Fish" contains a two part recommendation relative to processors and quota. The first part speaks to allocating a portion of the IFQs to processors; the second speaks to creating a "two pie" or PQ system:

"On a national basis, the committee found no compelling reason to recommend the inclusion or exclusion of processors from eligibility to receive initial (fishing) quota shares"

"Nor did the committee find a compelling reason to establish a separate, complementary processor quota system (the "two-pie" system)."

Page 153-155 of "Sharing the Fish" provides a more extensive and very useful discussion of the issues surrounding processor quota allocations. The NAS concluded:

"The committee was not convinced, however, that the solution to the perceived problems lies in the allocation of either harvesting or processing quota to processors."

2.1.2 Distribution of Benefits of Quota Shares - Initial Allocation

"Sharing the Fish" - the report to Congress by the National Academy of Science recommended a broad distribution of the benefits of Quota share programs. The benefits are broadly distributed in the initial allocation under the harvester IFQ portion of the Council's plan. However, the benefits of the Processor Quota are highly concentrated.

- About 250 harvester vessels would get allocations as IFQs.
- Only 21 of the 80 processors who operated in opilio in the last 10 years would receive PQs.
- According to the Council's analysis "the top 12 would receive more quota allocation than they historically processed (96.4 percent compared to 75.66 percent)."
- The top four opilio processors will be guaranteed 57.6% of the PQ.

2.1.3 Distribution of Benefits and Consolidation

In contrast to the harvest sector where caps were set at levels that would maintain a minimum fleet size of about 100 boats, processing caps were set so as to allow consolidation to only 2 processing facilities.

Though the processor ownership cap is set at 30%, the action would also grandfather in initial recipients of IPQ, not as of the date of Council action in June of 2002, but as of a date in the future when IPQ is actually issued - thus inviting consolidation in the interim.

Use caps were set for only one fishery in one region, (opilio in the northern region) at 60% of the IPQ. There was no definition of the duration of "use" (i.e. leasing) as time limited. Thus even if the 30% ownership caps did provide for a minimum of 4 processors per fishery, the lack of "use" caps allows the ownership caps to be neatly circumvented by 99 year leases.

In addition to the lack of meaningful consolidation limits for PQs holders, individual processing companies are allowed to own up to five percent of the harvest quota, while harvesting companies are limited to one percent.

The Council's lack of meaningful action on ownership and use caps opens the door to unconstrained consolidation of the processor sector before and after implementation. There is a fundamental inconsistency between the concerns imbedded in the MS-FCMA over excessive shares and promoted in the NAS report, and the creation of PQs.

2.1.4 Foreign Ownership

On page 155 of "Sharing the Fish" the NAS notes:

"If there is a consistent congressional policy, it can be characterized as resistance to foreign ownership of fishing vessels and foreign exploitation of fish resources with the U.S. EEZ (e.g., 16 U.S.C. 1812[a], 1824[b][6]). The concerns giving rise to the exclusion of foreign interests fall within several categories:

- Fear of foreign domination of the maritime industry and fisheries;
- Difficulties in regulating foreign-owned businesses;
- Threats to the social values of U.S. fishing communities; and
- Loss of potential economic benefits.

The Council's analysis (page 393) showed that between 37% and 49% of Processor Quota would be allocated to foreign processors. This does not take into account the amounts to be allocated to domestic 'shell' corporations, formed to qualify vessel ownership under MARAD rules. [e.g. Peter Pan Seafoods, a Japanese-owned company, would receive an estimated 14% of initial PQS for opilio. A subsidiary which owns a processing ship, Steller Sea, would receive as much as 5% additional allocation, which has not been accounted as allocation to foreign processors.

It is unlikely that foreign owned processors could be precluded from being issued Processor Quota, because they would rely on treaty protections to demand equal treatment (as occurred under the AFA). It is ironic that we restrict the allocation of IFQs to US citizens only, when Processor Quota would require some of those US citizens to sell their property/catch to foreign owned processing companies.

Processor Quotas are inconsistent with the recommendations of the National Academy of Sciences found in "Sharing the Fish."

2.2 Economists' Views on Processor Quotas

The entire theoretical underpinning of Processor Quotas rests on the work of one economist – Scott Matulich. It is his belief that in a free market, fishers with IFQs will "expropriate the quasi-rents rightfully belonging to processors" because harvesters would no longer fear that company owned boats would pre-empt their catch if they were to go on strike.

Matulich has been able to parlay this diagnosis into a prescription for a particular cure of his own design called the "2-pie" or PQ system. The Council bought off on this prescription at a particular dosage level PQs for 90% of each catcher boats' harvest. Unfortunately there is no FDA to require testing on this new medicine to determine a safe dosage level, before it is administered to the crab fleet.

To judge whether the side effects of Matulich's cure are likely to be worse than the disease, it is necessary to turn to other economists. As noted in the preceding section the National Academy of Science considered and rejected Matulich's prescription. They were not alone.

2.2.1 The GAO on Matulich

In December of 2002 the GAO provided this committee with a report on IFQs which contained a very critical review of a paper by Matulich purporting to provide an empirical basis for his theory in the context of the existing Halibut and Sablefish IFQ program. They questioned the methodology and the potential for bias in the survey design for gathering data.

2.2.2 Economists on Processor Quota - Milon and Hamilton

In a paper prepared under contract for the Council by Florida economists J. Walter Milon and Stephan F. Hamilton (A Comparative Analysis of Alternative Rationalization Models for the Bering Sea/Aleutian Islands Crab Fisheries - March 2002) the authors describe the impacts of a "segmented monopsony."

In discussing the IPQ model Milon and Hamilton noted:

"The (PQ) quota allocation defines a property right of each processor to serve a perfectly segmented market, and, with a fixed quantity of harvest, each processor maximizes his profits by paying the lowest ex-vessel price that supports harvester delivery of this quantity. **The outcome is regional monopsony ex-vessel pricing...**Accordingly, the delineation of processor quota rights subsumes all economic rent from the ITQ program in the harvest sector...With a two pie permit distribution that allocates the full processing quota, the value of harvester permits are driven to zero...With completely defined property rights in the processing sector, the allocation of property rights in a harvest sector ITQ program becomes redundant."

The Council stopped just short of completely defining property rights in the processing sector, leaving 10% of the catcher boat harvest in an open market.

Milon and Hamilton went on to observe that in a system where some percent of the harvest share remains "free market" (such as the 10% recommended in the Council action) the outcome is a blend that:

"...results in a continuum of market segmentation levels. Consequently, all possible two-pie permit distributions have identical implications for economic efficiency, but differ in the degree to which the policy rent is shared between market participants. **Processors are likely to fare better, and harvesters fare worse, as the ratio of A to B permits increases in the proposed fishery management system.**"

Cartels are precluded by existing anti-trust laws. It is ironic that the same outcome (monopsony pricing) would be legally achievable under Processor Quotas. The only functional difference is that when a legal Processor Quota system segments the market, it will be more effective than if a group of processors had conspired to set prices. In the latter instance there is always hope that a new processor could enter destabilize the cartel by offering competitive prices.

2.2.3 Economists on Processor Quota – Halvorsen

Economist Dr. Halvorsen, who was contracted by the Council for an earlier analysis of the distribution of bargaining power under different 'game' rules for American Fisheries Act coops, was also critical of the Matulich 2 Pie theory. Dr. Halvorsen presented a paper to a hearing of the U.S. House Resources Committee explaining the theoretical deficiencies of the Matulich theory. Additional analysis by Dr. Halvorsen have been submitted to this committee by Mayor Freed.

2.2.4 Economists on Processor Quota - Christy and Anderson

Two other very prominent fisheries economists served on the NMFS Advisory Panel to the NAS when "Sharing the Fish" was prepared, Lee Anderson (chairman of the NMFS East Coast AP) and Francis Christy. Christy, who worked in fisheries for many years for the UN-FAO, is considered to be the economist who came up with the idea for IFQs. Lee Anderson, who wrote a seminal text book on IFQs and economic theory, was a member of the Mid-Atlantic Fisheries Management Council when the 1st IFQ program was adopted. Both economists have been very critical of the Matulich theory and of the idea of PQs. While Anderson recognizes the potential for negative impacts on processors from IFQs to

the extent that their capital is non-malleable, he doesn't advocate PQs as the appropriate fix for that potential problem.

3.0 Do We Believe in the Value of a Competitive Marketplace?

3.1 Price Formation Under Status Quo versus Under Processor Quota

The heart of the controversy over Processor Quota goes to its impact on price formation.

3.1.1 Price Formation Under Status Quo

Given the depressed state of crab stock, the last Bristol Bay Red King Crab fishery lasted just over three days. The last opilio season was a matter of weeks. These are the two major crab fisheries. Price has been negotiated pre-season by a marketing association. The derby nature of the fishery makes it difficult to 'shop around' - crabbers have generally been price takers in a world market for crab.

The opilio catcher boat fleet has gone on strike the last couple years. However, because there are a number of catcher processors who fish a common quota with the catcher boats, striking means foregoing a portion of the harvest. One of the major processing companies owns 4 of the catcher processors, so their reaction to a strike is "throw me in the briar patch."

With three day seasons in the Red King crab fishery, strikes would be economic suicide for catcher boats. Matulich is right about one thing, shortened seasons are better for processors than they are for harvesters.

3.1.2 Price Formation Under Processor Quota

The program the Council passed and has requested Congress to make legal is very different. It allows harvesters to sell 10% of their catch to the processor of their choice. The other 90% must be delivered only to a processor holding unused IPQ. This results in a game of "musical chairs" where the "last man standing" has no choice about where to sell - and as a consequence there is an urgency to "sit down" early at a sub-optimal price to avoid being the "last man standing."

If a harvester wishes to move to a different processor because they are unhappy with the way they are being treated, there is only one way to do it. They must displace someone who is working for a different processor. The only way to do that is to offer to fish at a lower price than the person you are displacing. This fundamental alteration of the dynamics into a game of musical chairs destroys the ability of fishers to benefit from collective bargaining as provided under the 1934 Fishermen's Marketing Act.

3.2 The Nature of the Right or Privilege represented by the Processing Quota

There is a fundamental difference in purpose between IFQs and PQs. The purpose of PQ is to direct the transfer of private property. The purpose of IFQs is to allocate access to a share of free swimming critters, which up to the point of capture, are a public trust resource.

IFQs are generally understood to be a privilege to harvest a fixed portion of the common property public trust resource. The result of being allowed to harvest that resource is that it is converted to private property at the point of harvest.

A PQ is a right or privilege to process a fixed portion of the harvest. Congress has been clear that they

regard Harvest Quota shares as a privilege, but there is a spectrum between 'privilege' and 'right' that has yet to be debated with regard to PQs. The wrinkle here is that crab, once harvested, have been converted to private property. Thus, it appears that the PQ directs the disposition of private property, rather than the disposition of a public resource.

The introduction of PQs for the purpose of eliminating or restraining competition among processors creates a regulated marketplace and the need to provide a substitute mechanism for price formation.

4.0 Making a Square Wheel Round – Fixing the Impacts of PQs

The Council failed to analyze and debate the impacts of a 90/10 PQ system up front and made the assumption that allowing 10% free market or “B shares” would serve to simultaneously allow opportunity for disenfranchised processors and communities as well as provide harvesters leverage for obtaining a fair price. The Council also set in motion a process of “trailing amendments” to address price formation through “binding arbitration” and “community protections.”

4.1 Will 10% B Shares Serve Their Intended Purpose?

The State of Alaska’s Issue Paper has said that 'B' shares will

- Protect harvester’s bargaining power and guarantee a fair price for all crab deliveries.
- Provide a pool of product for new processors to enter the fishery.
- Increase the share of communities which have limited qualified 'A' share processors.

The National Environmental Policy Act requires the evaluation of regulatory actions by examining contrasting alternatives, so that decisions rely on analysis rather than unsupported assertions.

In order for the above assertions to be possible, it must be plausible that being a non-PQ endowed processor is a viable business. This raises the threshold question, “How does a non-PQ endowed processor attract B share deliveries?”

4.1.1 A Simplified Answer

The following is a very simple modeling exercise that shows the answer is “no.”

Assume a base ex-vessel price of \$1/lb in the PQ sector.

Assume a Processor 1 is PQ endowed with 1,000,000 lbs and takes A share deliveries from 10 vessels with 100,000 lbs each.

Assume Processor 2, not PQ endowed needs 100,000 lbs to justify operating a crab line.

In order to attract deliveries from 10 vessels with 10,000 lb each of B share crab Processor 2 will have to pay some sort of incentive bonus. If Processor 2 determines it can pay \$1.10 (a 10 cent “competitive bonus”) and still show a profit, will doing so attract deliveries of B shares?

In order to retain the deliveries of the 100,000 lbs of B share crab from its 10 vessels Processor 1 will have to pay some sort of “loyalty bonus.” If Processor 1 determines it is willing to pay \$1.01 (a 1 cent “loyalty bonus”) pro-rated over both A and B deliveries, why would the vessels deliver B shares to Processor 2?

Both Processor 1 and 2 are paying an ‘extra’ \$10,000 to get the B share deliveries. The difference is that Processor 1 is amortizing that \$10,000 over 1,000,000 lbs and Processor 2 is amortizing over just 100,000 lbs. This gives the PQ endowed processor a 10:1 advantage over the non-PQ processor. (If B

shares had been set at 20% the PQ endowed processor would still have a 5:1 advantage, or about a 3:1 advantage if B shares had been set at 30%)

Entry by a non-PQ endowed processor is unlikely to occur unless PQ endowed processors are indifferent to retaining B share deliveries. If any new processors did enter, they would quickly be driven out by the endowed processors price leverage. When the game is this clearly rigged, very few will make the mistake of playing.

If there are no non-PQ endowed B share processors, they can't fulfill the variety of functions asserted in the "Issue Papers."

4.1.2 The Missing Analysis

One of the stated purposes of PQs is to address the transitional costs associated with non-malleable capital in the processing sector. The analysis currently lacks any quantitative analysis of the crab specific fixed capital (malleable or otherwise) in the processing sector.

Part of the reason for the lack of analysis is that Section 303(b)(7) of the M-S Act exempts processors from the requirement to submit economic data. As a result they are free to claim harm, but the analysts don't have the ability to verify their claims.

If analysis shows that there is only 10 cents on the dollar of bargaining power at stake in the choice between PQs at levels between 0% to 100%, that difference represents a difference of \$10-50 million per year in ex-vessel revenue. That difference in revenue in turn affects the raw fish tax collected by the state of Alaska as well as wages for crew flowing into communities. The analysis should have included an evaluation of the level and duration of the PQ necessary to compensate the transitional costs of the processing sector; but again, processors have hidden behind the lack of data.

4.2 Binding Arbitration – A Substitute for Competition?

The Council recognized that PQs would have a profound impact on price formation and so they initiated a trailing amendment to deal with Binding Arbitration. The NPFMC Chairman appointed a committee of fishermen and processor representatives to address the issues of binding arbitration. This committee developed two distinct approaches.

4.2.1 Need for Arbitration

Binding arbitration is necessary to address the inherently anti-competitive effect of the PQ component of crab rationalization. The magnitude of the problem is proportionate to the A/B share split, and at 90/10 the Binding Arbitration process plays a crucial role in substituting for the removal of a competitive market for harvesters.

PQs would effectively segment and allocate 90% of the market into which crab harvests will be delivered. That action would radically shift negotiating leverage between harvesters and processors relative to status quo. Without a specific legislative exemption, that action would constitute a "per se" violation of antitrust law equivalent to price fixing. It is a "hard-core cartel agreement" that is prosecuted criminally by the Department of Justice.¹

¹ By contrast, fishermen have had an exemption from antitrust law that allows them to collectively harvest, process, market and/or sell their catch since the adoption of the Fishermen's Collective Marketing Act in 1934. Through a qualifying fishermen's cooperative, it is legal for fishermen to allocate among themselves harvest
(footnote continued)

Binding arbitration is intended to address failed price negotiations, and to reintroduce parity lost through processor market segmentation. Binding arbitration is not intended to be a substitute for consensual price negotiation, and we expect and intend that most if not all crab delivery contracts will be settled through negotiation. However, all negotiations are conducted against the parties' outside option if negotiations fail, which in this case is the price that would be set under arbitration. Therefore, the results of the model chosen will directly condition the results of such negotiations.

While it is not panacea that will undo the anti-competitive impact of PQs, the "Fleetwide" conventional arbitration model more appropriately addresses the negotiation leverage shift associated with the Council's preferred rationalization alternative. The segmented "Last Best Offer" model, does not.

4.2.2 Contrasting the Alternatives

The Council tasked the Binding Arbitration Committee with developing an arbitration program, and the committee came back to the Council with two models referred to as the "Fleetwide Minimum Price" (FW) and the "Last Best Offer" (LBO) models.

The names of the two Binding Arbitration models don't capture the range of differences.

4.2.2.1 What's In a Name? – Fleetwide Arbitration

We believe the FW model works better than the segmented LBO model in part because it is more closely models the current price formation process, by setting price before a harvester is required to make an irrevocable commitment to deliver.

As its name implies the "Fleetwide" arbitration model is designed to create a minimum price that is available to the whole fleet as a "safety net." It allows the arbitrator to 'cut the baby' and establish a minimum price that is between the positions taken by either processors or harvesters in the preliminary negotiations.

4.2.2.2 What's In a Name? – Last Best Offer Arbitration

Under the segmented LBO model, harvesters must irrevocably commit to deliver their crab to a processor to trigger a price arbitration. This is a highly unusual departure from standard commercial practice. It is akin to entering a contract to buy a house before the price has been revealed. It will have adverse economic and psychological effects on harvesters entering the negotiation process.

Given that the purpose of Binding Arbitration is to compensate for the creation of a segmented market, providing a reasonable outside option makes more sense than stripping the harvester of the right to strike.

The "Last Best Offer" model involves separate isolated arbitrations for each processor and for individual harvesters or groups of harvesters delivering to a particular processor. While LBO arbitration forces parties to narrow the range of proposals submitted to the arbitrator(s), also disadvantages the more risk averse party, and invites strategic gaming by processors. Crab harvesters, who typically depend heavily on their crab revenues for survival, are likely to be much more risk averse

shares of a fishery, and to collectively negotiate the prices at which they are willing to sell their catch. It is also legal for Councils to adopt individual fishing quota programs which allocate harvest shares by regulation.

in crab price negotiations than crab processors who have other sources of income (such as AFA pollock processors).

Harvesters in these circumstances have proportionately more to lose than their processor counterpart. As a consequence, they may well have a strong incentive to buy their way out of arbitration at a discount, rather than enter a process under which an arbitrator is constrained to accepting one or the other of the parties' price proposals, rather than having the latitude to frame an equitable result.

4.2.2.4 Dr. Plott's Analysis

The FW model was deliberately designed to produce an environment in which the parties are encouraged to collaborate to produce additional value. In Dr. Plott's experimental analysis for the Council, it appears to have done so. On the other hand, the segmented LBO model fractionalizes parties, and in Dr. Plott's experiments produced a more contentious negotiating environment, with fewer well timed deliveries, and at least one instance of a harvester choosing not to "deliver." This is an important consideration, if we are hoping to obtain additional value from our crab resources through rationalization.

4.2.2.5 Information available to the arbitrator(s)

It is critical under either model that the arbitrators have access to data concerning historical and current crab transactions. Under the FW model, all arbitrations are conducted by the same arbitrator or arbitration panel. However, under the segmented LBO model there is no assurance of such information exchange.

This is important, as there are unresolved legal and policy issues which may prevent the arbitrators from accessing the data base being established in connection with the program to verify the accuracy of information submitted in the discrete arbitrations. Section 303(b)(7) and 402(b) of the M-S Act prevent the collection of necessary verification data from processors, and would prohibit its release to an arbitrator even if it were collected.

4.2.2.6 Arbitration timelines

The FW model was designed to prevent the arbitration process from being time constrained. The segmented LBO system has set what we perceive to be an extremely tight time frame within which all arbitrations would take place. We are concerned that the resulting time constraint may shift negotiating leverage inappropriately, and prevent an effective exchange of data between arbitrations.

The compressed 15 day timeline for LBO arbitration is likely to require separate arbitrators as well. This means that any individual arbitrator will have a limited information base to evaluate the market. A single Arbitrator with access to a broad view of the full market under the FW model is better situated to determine a fair minimum price. If each PQ owner's arbitrations are happening in a vacuum, the arbitrator will have a narrow frame of reference for ground-truthing the PQ owner's data.

4.2.2.7 Arbitration administration

Given the significance of binding arbitration in the context of a segmented and allocated processing market, we think it is far more critical that the system function well than be cheap. In any case, we do not believe that the relative costs of the two systems would be substantially different. The FW model would generally use one arbitrator or a single panel over a longer time, while the segmented LBO model would use more arbitrators or arbitrator panels over a shorter time frame. .

4.2.3 Quality issues

Quality affects price, and in the absence of well defined quality standards and a quick, efficient and equitable enforcement system, quality issues could skew negotiating leverage notwithstanding arbitration system design. This remains as an issue that needs to be referred to the Binding Arbitration Committee for further work.

4.2.4 Data Verification

The Analysis states on page 3.7-8 that the arbitrator will need to invest substantial time and effort into development of the historic division of revenues standard, and to determine both historic ex vessel prices and first wholesale prices. It notes:

“The magnitude of this problem is not likely to be fully understood until the arbitrator begins the process of calculating the division of revenues.”

The Analysis points to a long list of complicating factors in the arbitrators’ task. It states that determining the historic first wholesale prices and revenues division will also be:

“complicated by the lack of uniformity of processors and the different products those processors sell into different markets.”
“complicated by vertical integration of the processing sector.”
“complicated by several other factors...
 “...sensitive to the production levels of specific products...”
 “...sensitive to changes in total harvest...”
 “...(and) location of landings”
“complicate(d)...(because) Commercial Operator Annual Reports (COAR)...distinguish species, but not fishery.”

Without the ability to access the Data Collection system, it is imperative that the Arbitrator will not have the ability to ‘ground truth’ information provide by participant. There is a need for retroactive gathering of data to establish a baseline for measuring impacts of PQs and the efficacy of Binding Arbitration. Unfortunately this may be an impossible task.

NOAA-GC has said that the Data Collection program will be unable to either provide the necessary data, or even verify the accuracy of data provided to the Arbitrator by participants, without changes to section 303(b)(7) and 402(b) of the M-S Act.

4.2.5 The Council’s Revised “Last Best Offer” Model

The Council ultimately adopted a revised LBO model which incorporated a watered down version of what is called the “Steele amendment.” The Steele amendment would have utilized the highest arbitrated price (reflecting a minimum of 7% of the market) resulting from the LBO process to establish a fleetwide price. In one significant way this reflects current practice where the Alaska Marketing Association negotiates with a number of processors and signs a contract with the processor with the best offer, and then that offer is ultimately matched by other processors.

The success of the Steele amendment version of LBO would have depended on the continued survival of a number of processors in the 7% market share range. Under the consolidation rules, these smaller IPQ holders may disappear over time, and with them the potential of the revised LBO to achieve its goal of a quasi-competitive fleetwide price.

However, the Council's revised LBO alternative merely uses the information on the highest price representing 7% of the market as information available for the arbitrator's consideration in the subsequent year.

The Binding Arbitration process recommended by the Council fails to provide a meaningful safety net. It does not provide assurance of an outside option approximating a competitive marketplace.

4.4 Community Protections

The second set of trailing amendments dealt with community protections. The CRAB Group concurs with the testimony of Mayor Freed of Kodiak.

The supposed 'right of first refusal is an ephemeral and unworkable "protection" to a problem that would not exist but for the inclusion of PQs in the program.

PQs facilitate consolidation and the lack of meaningful processor consolidation limits in the program ultimately means plant closings in remote Alaskan coastal communities.

4.4 Government in the Marketplace

The Council has repeatedly stated its intent to modify the program to respond to unintended impacts. If it is to do so it will need far broader authority than legislation which simply implements the preferred alternative. This implies the Council is asking for a blank check from Congress. If Congress doesn't provide a blank check, then Congress must exercise real time oversight of the program as only Congress will have the power to amend it. It is naïve to imagine that Congress can micro-manage the impacts of PQs in real time, or that the impacts will be reversible.

When government steps it to try to simulate the function of a competitive market it is sticking its foot in a tar baby. If Congress authorizes PQs, it will transform Councils from fish management bodies into a hybrid of, or delegating the authority of, the National Labor Relations Board, Federal Trade Commission, Department of Justice Anti-trust Division, and a Public Utility Regulatory Commission. Council members are not selected for their competence in these areas, which is why they do not currently have the authority to adopt PQs.

5.0 Alternatives to Processor Quotas to Protect Processors

There are many alternative approaches that have been utilized elsewhere to deal with the concerns of processors in a variety of rationalized fisheries. These include elements in a number of existing programs, as well as proposed alternatives that didn't receive adequate consideration by the Council.

In the crab rationalization plan, processors were given substantial protection by various program elements including the following:

- Processors are allowed to own and acquire IFQs.
- Catcher Vessel IFQ holders must deliver their crab to processors rather than processing themselves as Catcher Processors.
- Regional restriction on deliveries, which favor existing processors.
- Limitations on consolidation of IFQ ownership at 1% each for harvesters, which preserve a diverse supply for processors.
- Processors are allowed up to 5% each of the harvest IFQ, in contrast to 1% limit for harvesters.

Without analysis of the adequacy of these provisions, nor discussion or debate, the NPFMC added the provision of Processor Quota. If analysis shows there is further necessity to protect processors, there are less-damaging alternatives in existing programs such as the AFA.

5.1 Existing Programs

5.1.1 AFA Pollock in the Shoreside Sector

- AFA shoreside processors were collectively guaranteed an increased share of the pie.
- AFA shoreside processors were provided a closed class.
- AFA shoreside processors were provided with a degree of stability in the design of the coop rule.

AFA catcher vessels are only guaranteed their history as a member of a coop with a processor partner. 90% of the catch history of the coop had to be delivered to the processor partner in a given year. Though vessels are able to move between processors annually, disincentives were built in that discouraged movement between coops, where the alternative to being in a coop was an open access derby for one year.

The critical difference between the AFA processor protections and PQs is that while the AFA coops provide a large measure of stability through the requirement for annual coop contracts with an eligible processor, no processor is guaranteed a fixed share of the harvest for more than one year, and ultimately it is competition that governs whether a vessel will remain with a processor or move its quota to another processor.

5.1.2 Halibut & Sablefish IFQs

Halibut and sablefish shoreside processors were protected from competing with freezer boats.

5.1.3 British Columbia's IVQ Groundfish

In the BC Canada groundfish ITQ, the allocation of 10% of a vessel's catch history is conditional on community and processor concerns.

5.1.4 Eastern Canada Opilio Crab

In the "harvester only" IFQ program for snow crab, binding arbitration was instituted to set a base price. It is worth noting that crab processing there is still profitable enough that it has attracted a number of new entrants.

5.2 Alternatives discussed by the NPFMC's Advisory Panel

The Council's Advisory Panel offered a number of alternatives to Processor Quotas which didn't receive adequate consideration.

- Processors could be allocated a portion of the harvest ITQ commensurate with their relative proportion of fishery specific non-malleable capital.

- A quasi closed class of processor, guaranteeing a percentage of the harvest to be delivered to the class of eligible processors based on their aggregate processing history.
- An AFA style coop with disincentives for not joining or for leaving a coop.

There are many options for addressing processor concerns without adopting PQs and a segmented market.

6.0 Public Comment – Who Supports Processor Quotas

Letters submitted to the Council concerning Crab Rationalization at the June 2002 meeting were overwhelmingly against Processor Quota.

The single harvesters association endorsing Processor Quota was Alaska Crab Coalition, who supported it at the 80% level, with the remaining 20% to be ‘free market.’ Their written rationale for limiting PQs to 80% provided to the Advisory Panel at the June Council meeting makes an excellent case as to the problems with Processor Quota at any level. Their recent (albeit temporary) retraction of support for the PQ program following the April Council action on Binding Arbitration stated:

“The ACC cannot accept the arbitration approach adopted by the Council, and accordingly is forced to oppose statutory authorization of the BSAI rationalization plan, until and unless the Council adopts a system that protects harvesters against market distortions that would otherwise result from processors shares. Whether that can be achieved within the context of the 90/10 formula is an open question.”

Though ACC is now “confident that crab harvesters will be provided the comfort level they expect and deserve” in the ongoing process. The open question of the moment is what changes ACC expects will be adopted, but it is clear that they recognize the reality that Processor Quotas will result in “market distortions” and that even they question whether 90/10 isn’t going too far.

The CRAB Group, representing over 100 vessels, supports rationalization of the crab fishery but is opposed to PQ for all the reasons outlined in this document.

There are several associations representing segments of the crab fleet in addition to ACC and the CRAB Group.

- United Fishermen's Marketing Association, Inc. (UFMA) based in Kodiak strongly opposes PQs in the crab fishery or any other fishery.
- Tom Casey, representing the 30 crab vessels in the Alaska Fisheries Conservation Group (AFCG), has stated that their members find the 90% PQ program so untenable that they would prefer status quo.
- Jake Jacobs representing the Alaska Marketing Association testified at the April Council meeting that “Last Best Offer Arbitration is an open sore.”

A petition signed by over 1000 Alaskans was published this week in the Anchorage Daily News. Other petitions circulated in the Seattle area with several hundred signatures were submitted to members of this committee by Fishermen’s Finest company.

Changing the M-S Act to allow for Processor Quotas in the Bering Sea crab fishery is only the allowing the camels nose into the tent. If it is allowed in this fishery, the pressure to allow it in all federally managed fisheries is inevitable. Does Congress really want to open up this can of worms and transform fisheries management Councils in to bodies with the authority to regulate trade? If so, then expect the amount of public comment on how to regulate markets to escalate exponentially.

7.0 Where Angels Fear to Tread - Recommendations

It is the position of the CRAB Group and others that Congress should reject the Council's request for a radical expansion of its duties beyond fisheries management and into market regulation represented by the request for authorization to adopt the Processor Quota element of their preferred alternative.

The harvester component of the crab rationalization program is legal now that the moratorium on IFQs has expired. It can be adopted together with the CDQ provisions, the regionalization provisions, and the skipper and crew provisions designed by the Council, but without PQs.

The need for the complex elements on binding arbitration and additional community protections are largely a response to the impacts of market segmentation resulting from PQs.

If Congress does authorize PQs it is critical to do so in a manner that guarantees that improved community protections and stronger binding arbitration process are all done at the same time and done right.

Thank you for the privilege of submitting this testimony to your committee.

dave fraser
Captain, FV Muir Milach
PO Box 771
Port Townsend WA 98368

RONDYS, INC.
5349 229TH Ave. SE
Issaquah, WA 98029

May 3, 2004

Dr. James W. Balsiger, Alaska Regional Administrator
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

RE: Draft EIS for Crab Rationalization

Dear Dr. Balsiger:

I am very much concerned, not just about the whole Crab Rationalization procedures used by the North Pacific Fishing Management Council, but now about the EIS process. In particular, I am concerned how this is supposed to mesh with the measures already adopted by the Council that run counter to the grain of appropriate management philosophy.

For example, in respect to Binding Arbitration, there were, supposedly, safeguards built into the CR program to protect both harvesters and processors. At the time of developing this program, I recall that Canada's program was used as an example. The Canadian program has since fallen apart. Moreover, the Dept. of Justice has written an opinion that takes serious exception to the Council's program because it does not adequately protect harvesters. I feel these issues need to be re-addressed and the EIS is an appropriate venue.

Overall, there are just too many red flags in this program. Inadequate economic and environmental alternatives were studied. The EIS could serve as an opportunity to refine and correct problems and meet the goals of NEPA. In spite of the deadline, I urge you to refer this EIS for further work.

Thank you for your time and consideration.

Yours truly,

Margaret E. Hall

Crab EIS
5-3-04
C14

From David Whitmire <halibutman56@yahoo.com>

Date Monday, May 3, 2004 5:59 pm

To bsai.deis.comments@noaa.gov

Subject BSAI crab EIS

Dr. James Balsiger:

I am a commercial halibut fisherman concerned about the trickledown consequences of processor quota shares not only in my fishery, but others as well. Consolidation of these processor quota shares for BSAI crab is already occurring, as Trident has just purchased Norquest. How is further consolidation going to be prevented or addressed?

Tamara Shrader
P.O. Box 2601
Homer, AK.
99603

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**COPY FOR YOUR
INFORMATION**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Crab EIS
C15

May 3, 2003

Reply To
Attn Of: ECO-088

Ref: 01-065-NOA

James W. Balsiger, Administrator - Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

COPY

Dear Mr. Balsiger:

The U.S. Environmental Protection Agency has reviewed the draft Environmental Impact Statement (EIS) for the Bering Sea Aleutian Islands Crab Fisheries (CEQ #040119) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309, independent of NEPA, specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions and the document's adequacy in meeting NEPA requirements.

The draft EIS proposes to ration the crab fisheries by allocating crab harvesting and processing privileges to participants. The draft EIS evaluates the environmental and economic consequences of four alternatives: 1) status quo; 2) three-pie voluntary cooperative; 3) an individual fishing quota program; and 4) a cooperative program. The alternative programs under consideration are designed to balance the interests of several identifiable groups including harvesters, processors, communities and captains.

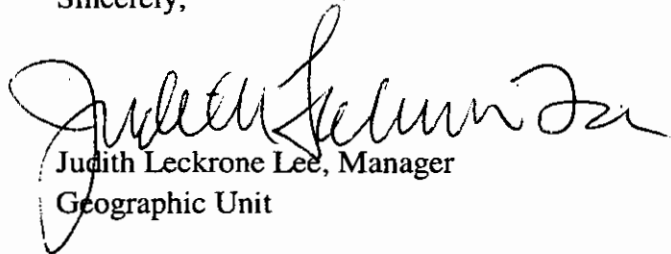
The Preferred Alternative (Three-Pie Voluntary Cooperative) is a program that would allocate harvest shares to harvesters, communities and captains. Processors would be allocated processing shares and designated regions would be allocated certain percentages of the crab landings and processing activities to preserve their historic interests in the fisheries. Safeguards built into the program include a binding arbitration program for the resolution of price disputes, extensive data collection, and a program review to assess the success of the program.

We support the safeguards proposed in the Preferred Alternative. There is a vital need for data collection during time periods outside the traditional fishing season to assure that fishing impacts on crab stocks are well known and allocations will not result in overfished crab stocks. In particular, male to female ratios and the size of male crabs would be monitored closely for indications of fishing pressure.

We have assigned a rating of LO (Lack of Objections) to the draft EIS. This rating and a summary of our comments will be published in the Federal Register. A copy of the rating system used in conducting our review is enclosed for your reference.

Thank you for the opportunity to review this draft EIS. If you would like to discuss these issues, please contact Mike Letourneau at (206) 553-6382 or feel free to contact me at (206) 553-6911.

Sincerely,



Judith Leckrone Lee, Manager
Geographic Unit

Enclosure

cc: M. Combes, EPA-AOO

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.



CITY OF SAINT PAUL

P.O. BOX 901
SAINT PAUL ISLAND, ALASKA
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Crab EIS

Late

Mr. James W. Balsiger
Administrator, Alaska Region NMFS
P.O. Box 21668
Juneau, AK 99802-1668

COPY

NOAA Office of Strategic Planning (PPI/SP)
SSMC3 Room 15603
1315 East-West Highway
Silver Springs, MD 20919

Dear Sirs:

Attached please find the City's comments of the Draft EIS for BSAI Crab Rationalization.

We have outlined all our concerns, and look forward to the Final EIS and eventual implementation of the program.

Thank you for allowing us to comment.

Cordially,

Phyllis A. Swetzer
City Clerk

PAS/me

Cc: Steve Minor, Waterfront Associates
Phillip Lestenkof, Central Bering Sea Fishermen's Association

Attachment

Comments
BSAI Crab Rationalization Draft EIS

From the City of Saint Paul, Alaska

Consistency with the Problem Statement

The North Pacific Management Council (NPFMC), after more than a year of consultation with the industry and agencies, determined (in 2001) that the implementation of a rationalization program to address issues of safety, resource management and over-capitalization within the framework of the Magnuson-Stevens Act was desirable.

After significant consultation and public testimony the NPFMC adopted the following Problem Statement:

Vessel owners, processors, and coastal communities have all made investments in the crab fisheries, and capacity in these fisheries far exceeds available resources. The BSAI crab stocks have also been highly variable and have suffered significant declines. Although three of these stocks are presently under rebuilding plans, the continuing race for fish frustrates conservation efforts. Additionally, the ability of crab harvesters and processors to diversify into other fisheries is severely limited and the economic viability of the crab industry is in jeopardy. Harvesting and processing capacity has expanded to accommodate highly abbreviated seasons, and presently, significant portions of that capacity operate in an economically inefficient manner or are idle between seasons.

Many of the concerns identified by the Council at the beginning of the comprehensive rationalization process in 1992 still exist for the BSAI crab fisheries.

Problems facing the fishery include:

- 1. Resource conservation, utilization and management problems;*
- 2. Bycatch and its associated mortalities, and potential landing deadloss;*
- 3. Excess harvesting and processing capacity, as well as low economic returns;*
- 4. Lack of economic stability for harvesters, processors and coastal communities; and*
- 5. High levels of occupational loss of life and injury.*

The problem facing the Council, in the continuing process of comprehensive rationalization, is to develop a management program which slows the race for fish, reduces bycatch and its associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, addresses the social and economic concerns of communities, maintains healthy harvesting and processing sectors and promotes efficiency and safety in the harvesting sector. Any such system should seek to achieve equity between the harvesting and processing sectors, including healthy, stable and competitive markets.

The City of Saint Paul, having reviewed the Draft EIS, finds that its analysis and conclusions are consistent with this problem statement; further, that the EIS supports the NPFMC's preferred alternative, identified as "*Alternative 2, Three-pie Voluntary Cooperative*" in the Draft EIS. Detailed comments follow.

Specific issues that have been well addressed

In a letter dated April 5, 2004 the City of Saint Paul raised several issues regarding the previous Draft EIS. Although the City did not specifically challenge any particular analysis or conclusions; we were concerned with the lack of definition and "real world" economic analysis provided the reader; and the fact that a lot of critical community analysis was included by reference only.

Our comments on these several issues appear to have been largely addressed in the current Draft EIS. In particular, we are pleased to see the direct inclusion of the entire "*Appendix 3: Social Impact Assessment of the Environmental Impact Statement for Bering Sea and Aleutian Islands Crab Fisheries*" in the CD-ROM version of the Draft EIS made available for review.

In our previous comments we asked that the Draft EIS draw a clearer distinction between types of fisheries-dependent communities: given the capital-intensive nature of these fisheries there are both harvester-dependent crab communities and processor-dependent crab communities; and both should be considered in the regulatory process. The new Draft EIS does a much better job defining and analyzing the two distinct "types" of crab-dependent communities as well as the relative impacts of each alternative on each type of community.

In our previous comments we also asked that the Draft EIS include more detailed discussion about the current state of the resource and economic impacts related to low abundance levels. In particular we were concerned because the BSAI crab industry is currently operating during a period of relatively low abundance and therefore, we believe, economic behavior under every alternative is going to be guided by relatively short-term considerations. In Chapters 3 and 4, the new Draft EIS includes better analysis of the impacts of the sustained period of low abundance facing the industry. We want to thank the authors for this additional effort.

Previous comments from other parties (which we generally agree with) have also been well addressed in the current Draft EIS. Specifically:

The definition of "efficiency", which seemed vague in the previous draft, has been well defined in the new Draft EIS. For those of us involved in the development of local economies and businesses this is a great help.

Most major participants agree that there will be a two to five year "transition period" as the program is phased in and de-capitalization takes hold. In anticipation of this the NPFMC has even built-in a two-year "Cool Down" period to facilitate a smoother transition. In the previous draft the differences between transition period impacts and

long-term program impacts were not always clearly defined. This has been greatly improved in the new Draft EIS.

Comments regarding Draft EIS Conclusions

The analysis continues to draw the conclusion (in several places) that "... harvester and processor efficiency might be negatively impacted by regional landing requirements." While that might be the aggregate effect of regional landings requirements, we would again point out that it can also be argued – in fact the program is in part designed for this – that requiring a diverse set of processors to operate in the Northern Region will improve harvester efficiency by providing markets closer to the grounds; and improve resource management and utilization by limiting on-board dead-loss that would otherwise occur on longer trips to southern ports. Any close observer of the BSAI crab fisheries knows that the Opilio grounds in particular have been moving north and west; away from the Southern Region.

Concerning the Vessel Buy-back program, which is currently underway, we understand that it is difficult to assess likely impacts and therefore we believe the Draft EIS can be finalized without any further analysis of this event.

Concerning the utilization of harvester B-shares and the likely impact on eligible processors; we already see evidence that there will be a separate and distinct market for the processing of B-shares that will be very lucrative for the harvest sector; and it is likely that the analysis may be understating harvester benefits and overstating (eligible) processor benefits on this issue. However, we also believe the development of a B-share market will reinforce the NPFMC's contention that B-share utilization and the underlying 90/10 split were appropriately analyzed.

We would again draw the reader's attention to the basic flaws – from a community perspective – in the IFQ alternative (Alternative 3). Although there are many, from a community perspective the two most significant are:

- As the analysis points out, "*... at time of transition (such as implementation of the program) and at times of large declines in total harvests, processors may not be able to realize even normal profits because of the intense competition to maintain market share.*" Please note that both conditions currently exist. This presents a significant problem for both coastal communities and harvesters, because it is likely that the processing sector will be reduced to just a few very large entities; diminishing the economic benefits to communities and available markets to harvesters; and ultimately threatening other less valuable fisheries in a region. Therefore, the IFQ alternative does not address community or even long-term harvester issues.
- Under the IFQ alternative there will be significant consolidation of the processing sector, which has the potential to threaten other regional fisheries including small-vessel

halibut fisheries, salmon and herring fisheries; which are currently "subsidized" by the relatively high-value, high-volume crab fishery.