

March 31, 2015

Mr. Dan Hull, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue
Anchorage, AK 99501-2252

Dear Chairman Hull:

The following report is submitted under Council agenda item C-1 by Inter-Cooperative Exchange (“ICE”), a crab harvesting cooperative formed pursuant to 50 C.F.R. § 680.21. ICE is an Alaska cooperative corporation organized and operated to qualify as a fishermen’s association under the Fishermen’s Collective Marketing Act of 1934, 15 U.S.C. § 521 et seq. (the “FCMA”).

ICE has 195 members that hold quota shares (“QS”) issued under the Bering Sea and Aleutian Islands (“BSAI”) crab rationalization program (the “Program”). ICE vessels harvest approximately 70% of the crab available under Program individual fishing quota (“IFQ”).

The following report is framed as answers to questions derived from the Council’s February 2013 motion concerning crab cooperative measures taken to facilitate the transfer of QS to active participants, including crew members and vessel owners, and to address Council concerns regarding lease rates and crew compensation.

1. What measures is the cooperative taking to facilitate the transfer of QS to active participants, including crew members and vessel owners?

a. ROFO. ICE has implemented a “right of first offer” (“ROFO”) in favor of crew members and active fishermen, giving them an opportunity to purchase QS in connection with each QS sale made by an ICE member that does not fall within a specific ROFO exemption. The current ICE ROFO provisions are included as an addendum to this report.

For purposes of the ICE ROFO, a crew member is an individual who meets the Council’s catcher vessel crew (“CVC”) QS eligibility requirements, and who did not receive catcher vessel owner (“CVO”) QS at initial allocation. An active fishermen is a crew member or a person that holds a direct or indirect interest in a vessel over 29’ in length that was employed in commercial fishing in State or Federal waters off Alaska during the last 12 months.

Under the ICE ROFO, crew members receive a first priority right to be offered not less than 10% of QS sold by ICE members, unless the sale falls within one of the ROFO exemptions. Active fishermen receive a second priority right of offer with respect to the other 90% of the QS being sold. Please note that crew members qualify as active fishermen, so they have two rights of first offer in connection with each QS sale.

Direct sales to crew members are not subject to the ROFO, and direct sales to active fishermen other than crew members are only subject to the crew member ROFO.

There is no minimum amount of QS a crew member or active fisherman must purchase to exercise the ROFO, and if either crew members' or active fishermen's offers to purchase exceed the amount offered for sale, the amount offered is allocated among the offerors on a pro rata basis.

b. FCMA Eligibility Standard. As a separate matter, ICE has adopted an eligibility standard that limits its membership to persons who work on a U.S. commercial fishing vessel under terms that give them direct exposure to the financial risks of production, or who hold a direct (i.e., Coast Guard documented) interest in a U.S. commercial fishing vessel under the same terms.

This standard was adopted as part of an FCMA compliance review, not as a measure to facilitate transfer of QS to active participants. However, QS holders value access to collective price negotiation and binding arbitration, and (to the best of our knowledge) ICE is currently the only crab harvesting cooperative that offers access to these functions and the related sensitive delivery term information. Therefore, it is reasonable to expect that additional QS holders will take steps to meet the ICE membership eligibility standard over time.

2. What is the level of participation from cooperative members regarding these measures? The ICE ROFO is incorporated into the ICE Membership Agreement, which each member is required to execute. To the best of ICE management's knowledge, no ICE member has transferred QS in breach of their ROFO obligations under the ICE Membership Agreement.

All ICE members must meet the ICE membership requirement described in Section 1.b, above.

3. How effective have these measures been? Application of the ICE ROFO requirement has resulted in crew members and active fishermen being offered the opportunity to purchase crab QS on a priority basis.

A website (www.crabqs.com) was created in 2013 to perform several ROFO program functions. Qualified crew members are able to register to receive notification of sales offerings. Brokers are able to easily distribute offerings to the qualified crew. Transfers are tracked to monitor compliance.

During the period November 10, 2013 through January 31, 2015, there were 243 unique transfers of QS of all types from 47 unique QS holding entities. Of these, 85 (or 35%) of the transfers were directly to qualified crewmembers, and 64 of those were transfers of CVC QS. As noted above, transfers to qualified crewmembers are not subject to ROFO.

Of the remaining 179 transfers, 31 transfers were made by four ICE members, 66 were made by 16 Alternative Crab Exchange member entities, one was made by one member of Crab Producers and Harvesters, nine were made by two members of the Trident Affiliated Crab Harvesting Corporation and 27 were made by four members of Alaska King Crab Harvesters Cooperative.

ICE members transferred a total of 3,572,898 QS units. Transfers of 3,228,431 units were subject to ROFO. All QS unit transfers were ROFO compliant. One qualified crewmember purchased 100 QS units. Active fishermen purchased 2,579,030 QS units (or 72% of the total number of units transferred by ICE members).

Members of all crab cooperatives transferred a total of 69,729,453 CVO and catcher processor owner (“CPO”) QS units during the reporting period. Of those units, 4,351,046 units (or approximately 6.2%) were purchased by qualified crew members.

When transfers from CVC and CPC holders are removed from the data set, the amount of CVO/CPO transferred is 66,467,025 QS units. Of that amount, 1,409,050 QS units (2.1%) were purchased by qualified crew and 61,125,919 (92%) were purchased by active fishermen.

4. What measures is the cooperative taking to address the issue of high lease rates, as they affect crew compensation? ICE has taken steps to sensitize its members to Council concerns regarding lease rates but, for reasons explained below, ICE has not taken steps to directly address the impact of lease rates on crew compensation.

As an initial matter, we note that the question posed above assumes lease rates affect crew compensation. ICE believes that whether or not they do, and if so, the extent to which they do, is unresolved.

As a separate but related matter, ICE has concerns regarding its authority to collect and report crew compensation information in its voluntary reports to the Council. ICE has concluded that it can collect and report quota lease rate information within the ambit of its FCMA exemption, as it reflects the distribution of crab harvesting revenues among its harvesting and non-harvesting members, and collective action by cooperative members concerning how those revenues are distributed is a well-recognized FCMA function. ICE has accordingly undertaken a lease rate survey, and the results are provided in Section 5, below.

On the other hand, ICE does not believe the FCMA authorizes its harvesting members to collectively negotiate crew compensation. Rather, ICE believes it is essential that each vessel owner negotiates with their crew on an individual and independent basis. Because surveys can be construed as methods for exchanging information to facilitate collective action, ICE has decided it would not be appropriate to undertake surveys that directly or indirectly address the issue of crew compensation.

We note that crew compensation data is available to the Council through Economic Data Reports (“EDR”), which vessel owners are required to file under Program regulations, and which they complete on an individual and confidential basis. We respectfully suggest that EDR data are the appropriate source of information to evaluate crew compensation. If the Council is interested in determining whether there is a relationship between lease rates and crew compensation, we respectfully suggest it do so by analyzing the relationship between lease rate data reported by cooperatives through their voluntary reports and by vessel owners through the EDR process, and crew compensation information it receives through EDRs.

All that being said, ICE is taking two steps to address Council concerns regarding crab quota lease rates. First, ICE notifies its members that the Council is concerned about the potential impact of high lease rates on vessel operations, and asks its members to individually consider voluntarily capping their lease rate asks and offers at 65% of adjusted gross revenues for Bristol Bay red King crab (“BBRKC”) and 50% of adjusted gross revenues for Bering Sea Snow crab (“BSS”).

Second, ICE requires its harvesting members to report the lease rates paid by every vessel that harvests crab under ICE IFQ. This requirement was initially adopted for the 2013-2014 crab fishing year, and is intended to remain in effect indefinitely.

ICE completed its first lease rate survey during March of this year, and is reporting the results in Section 5, below. The survey collected data from calendar year 2014, so it covers the 2013-2014 BSS season and the 2014-2015 BBRKC season. ICE collects lease rate information on a basis that is intended to be consistent with the related queries under the Program’s EDR requirements.

5. What is the level of participation from cooperative members regarding these measures?

Per Section 4, above, ICE collected and compiled information from vessels for BBRKC and BSS crab delivered on ICE IFQ permits.

The vessel manager or responsible ICE member was asked to provide calendar year 2014 financial information if the vessel made one or more deliveries of BBRKC or BSS crab harvested under leasing arrangements.¹ If a vessel harvested crab under two or more different leasing arrangements, the reporting party was asked to provide separate information for each of them. If a vessel did not harvest crab under a lease, their information was not collected for this report.

For each fishery, reporting parties were asked to provide the following information:

1. The total pounds harvested by the vessel, its gross sales revenues, the pounds harvested under lease and the sales revenues from leased crab.
2. The type and amount of expenses deducted from leased crab sales revenues before applying their lease factor. Reported deductions included landing taxes, NMFS cost recovery fees, crab buy-back fees, cargo insurance, Bering Sea Fisheries Research Foundation assessments and others.
3. The total amount paid to the lessor(s).

These data were reported directly to the Sullivan & Richards law firm, where vessel names were redacted to ensure confidentiality and the information was entered into spreadsheets. In two instances for BBRKC and in three instances for BSS, landings resulted in overages that were subject to 100% forfeiture of all revenues. These data were not included in the lease rate calculations.

¹ Some final prices for the 2014-2015 BBRKC fishery were not settled until after December 31, 2014, so the revenues from that fishery may be understated, and lease rates may be overstated.

47 vessels made landings of leased crab on ICE IFQ permits during the 2013-2014 BSS fishery, and 43 vessels made landings of leased crab on ICE IFQ permits during the 2014-2015 BBRKC season. For the BSS fishery, the requested information was compiled from 46 of the 47 vessels. One vessel reported that their financial records for the fishery had been archived and were not accessible prior to the report deadline. For the BBRKC fishery, the requested information was compiled from 43 of 43 vessels.

Two lease rates were derived from information reported by the vessels. One rate was measured as a percentage of adjusted gross (or “net”) revenues (i.e., gross sales revenues less certain expenses). The other rate was measured as a percentage of gross sales revenues. The “percent of net” lease rate does not account for the observed variation among vessels concerning the expenses deducted before “net” revenues are calculated. The “percent of gross” lease rate accounts for that variation, and allows for a more “apples to apples” comparison of the percentage of revenues paid to quota lessors.

BSS	% of Net	% of Gross
Simple Average	51.00%	46.72%
Weighted Average	50.70%	46.50%
Q1	50.00%	45.90%
Q2 (median)	50.00%	46.10%
Q3	51.00%	47.10%

BBRKC	% of Net	% of Gross
Simple Average	65.80%	61.90%
Weighted Average	65.70%	62.00%
Q1	65.00%	61.60%
Q2 (median)	65.00%	61.70%
Q3	69.10%	66.40%

6. How effective have these measures been? As stated above, ICE has not attempted to measure the effect, if any, of these measures on crew compensation. ICE continues to believe that crew compensation is best evaluated by comparing the daily rate of pay received by crab vessel crew members prior to rationalization (adjusted to include pre-season and post-season employment) to EDR data concerning the daily rates of pay received by crab crew members under the Program.

7. What future measures does the cooperative plan to take to address the Council concerns over active participation and lease rates as they affect crew compensation? ICE plans to continue developing and promoting its ROFO program. ICE will continue to notify its members regarding the Council’s sensitivity to high lease rates, will continue to request that members consider voluntarily restricting their lease rate asks and offers per paragraph 4, above, and will continue to conduct lease rate surveys and report the results to the Council. ICE will also continue to monitor EDR data as they become available, and will inform its members if crew member daily rates of pay reflected in those data vary significantly from pre-rationalization rates.

Inter-Cooperative Exchange

Quota Share Right of First Offer

Definitions. The capitalized terms in this document have the following meanings.

“Active Fisherman” means a Person that either: (i) holds a direct or indirect ownership interest in a Commercial Fishing Vessel as of the Annual Record Date, provides ICE or its agent with the information and documents that ICE requests as evidence of such ownership interest, and is named on the “Active Fisherman” list that ICE maintains; or (ii) is a Crab Crewmember.

“Annual Record Date” means the annual date selected and announced as such by the ICE Board of Directors from time to time.

“Commercial Fishing Vessel” means a vessel not less than twenty-nine (29) feet in length overall that has been employed in commercial fishing in Alaska state waters or in the Federal Fishery Conservation Zone off Alaska during the twelve (12) month period prior to the Annual Record Date. For purposes of this definition, a vessel employed in support of commercial fishing as a tender or research vessel is considered a Commercial Fishing Vessel.

“Crab Crewmember” means an individual who (i) meets the Crab Rationalization Program (“Program”) “C” share recent participation requirements as of the Record Date; (ii) did not receive catcher vessel owner (“CVO”) or catcher processor owner (“CPO”) quota share (“QS”) under the Program at initial allocation; and (iii) is named on the Crab Crewmember list that ICE maintains.

“Member” means a current member of Inter-Cooperative Exchange.

“Person” means natural persons, corporations, partnerships, limited liability companies and all other business entities.

“ROFO Administrator” means the person designated by ICE who maintains the Crab Crewmember and Active Fisherman eligibility lists, receives notices concerning Members’ QS sales, distributes those notices to the Persons on those lists, collects their replies, and notifies the QS seller or their agents regarding the amount of QS that Crab Crewmembers and Active Fishermen have elected to purchase.

Right of First Offer. The right of first offer (“ROFO”) described below is part of the ICE Membership Agreement. By becoming a Member, a Person agrees to give Crab Crewmembers and Active Fishermen a ROFO in connection with any sale of their Crab rationalization Program quota shares (“QS”) while they are a Member, and for a period of twelve (12) months after they terminate their ICE membership.

QS Sales. For ROFO purposes, a “QS sale” includes arm’s length purchase and sale transactions and sales of a majority interest in a business entity that holds QS (if the entity does not hold an interest in a Commercial Fishing Vessel). QS gifts, bequests and exchanges are not considered “sales” for ROFO purposes.

If a Member sells a direct or indirect majority interest in a business entity that holds QS, the business entity is required to extend a ROFO on the amount of QS it holds that is proportionate to the ownership interest being transferred.

If a Member sells direct or indirect interests in a business entity that holds QS to the same Person in separate transactions, sales within six (6) months of each other will be treated as a single sale for ROFO purposes. For example, if a Member sells a 20% interest in an LLC that holds QS to a third party on January 1, 2014, and then sells an additional 31% interest in the same LLC to the same third party on March 1, 2014, the two sales will be considered a single sale of a majority interest in the LLC, and if the third party purchaser is not a Crab Crewmember or an Active Fisherman, before completing the second sale, the LLC will have to offer 51% of its QS to Crab Crewmembers and Active Fishermen through the ROFO procedure below.

ROFO Procedure. The ROFO procedure is as follows:

1. Before selling QS to a Person who is not a Crab Crewmember, the Selling Member must notify the ROFO Administrator of the amount of QS offered for sale (the “Offered QS”), and the associated sale terms (the “Offer Terms”).
2. Upon receiving notice from a Selling Member, the ROFO Administrator will notify the Crab Crewmembers that ten percent (10%) of the Offered QS is available for purchase on the Offer Terms. The 10% being offered to the Crab Crewmembers is referred to as the “Crew Offer QS”.
3. Each Crab Crewmember will have fifteen (15) days from receiving notice during which they may agree to purchase some or all of the Crew Offer QS on the Offer Terms. Once made, a Crab Crewmember’s QS Offer is not revocable.
4. If the Crab Crewmember(s) agreeing to purchase Crew Offer QS (the “Purchasing Crewmembers”) collectively agree to purchase an amount of QS in excess of the Crew Offer QS, the ROFO Administrator will allocate the right to purchase Crew Offer QS among the Purchasing Crewmembers pro rata, according to the amount of the Crew Offer QS each of them has agreed to purchase.
5. When the 15-day Crab Crewmember offer period ends, the ROFO Administrator will determine the remaining amount of the Offered QS available for purchase, by deducting the amount that Crab Crewmembers have agreed to purchase. The remaining amount of QS is referred to as the “Fisherman Offer QS”.

6. The Selling Member may sell the Fisherman Offer QS to one or more Active Fishermen without going through the next steps of the ROFO procedure. However, if the Selling Member wishes to sell some or all of the Fisherman Offer QS to one or more Persons who are not Active Fishermen, the Selling Member must first notify the ROFO Administrator, who will notify the Active Fishermen of the amount of Fisherman Offer QS that the Selling Member wishes to sell to Persons other than Active Fishermen (the "Third Party QS") and the Offer Terms on which the Third Party QS can be purchased.

7. The Active Fishermen will have five (5) days during which one or more of them may agree to purchase some or all of the Third Party QS on the Offer Terms. Once made, an Active Fisherman's QS Offer is not revocable.

8. If the Active Fishermen agreeing to purchase Third Party QS (the "Purchasing Fishermen") collectively agree to purchase an amount of QS in excess of the Third Party QS, the ROFO Administrator will allocate the right to purchase the Third Party QS among the Purchasing Fishermen pro rata, according to the amount each of them has agreed to purchase.

9. When the 5-day Active Fisherman offer period expires, the ROFO Administrator will determine the total amount of the Offered QS that the Crab Crewmembers and the Active Fishermen have agreed to purchase on the Offer Terms, and will notify the Selling Member. The Selling Member will then have the right to sell the remaining balance of the Offered QS (the "Market QS") to persons other than the Crab Crewmembers and Active Fishermen (the "Third Parties") provided that the terms of the Third Party sales are not more favorable than the Offer Terms, and the Third Party sales take place within one hundred eighty (180) days (the "Market Period").

10. If a Selling Member accepts an offer during the Market Period from one or more Third Parties to purchase some or all of the Marketable QS on terms no more favorable to the Third Parties than the Offer Terms (an "Accepted Offer"), the Selling Member must notify the ROFO Administrator of the Accepted Offer and the proposed closing date for the related transaction, which must not be earlier than twelve (12) business days from the date of that notice.

11. Within two (2) business days of receiving notice of an Accepted Offer, the ROFO Administrator will notify the Purchasing Crewmembers and the Purchasing Fishermen of the Accepted Offer and proposed closing date. Within ten (10) days of receiving that notice, each Purchasing Crewmember and Purchasing Fisherman must deposit their share of any cash to be paid to the Selling Member at closing into escrow as directed by the ROFO Administrator, and must execute and deliver any financial instruments and other documents consistent with the Offer Terms.

12. If the Selling Member transfers QS to one or more Third Parties in accordance with the Accepted Offer, the Selling Member will notify the ROFO Administrator, who will notify the Purchasing Crewmembers and Purchasing Fishermen and who will direct the

escrow agent to proceed with closing of the QS transfers from the Selling Member to the Purchasing Crewmembers and Purchasing Fishermen.

13. If the Selling Member does not sell any of the Offered QS to a Third Party within the Market Period, the Purchasing Crewmembers' and the Purchasing Active Fishermen's offers to purchase Offered QS will expire, and the Purchasing Crewmembers and the Purchasing Active Members will have no right or obligation to purchase any of the Offered QS. The Selling Member must not sell the Offered QS unless and until the Selling Member repeats the ROFO procedure described above.

Transactions Exempted from Right of First Offer. The following QS sales and transfers of interest in business entities holding QS are not subject to the ROFO procedure.

1. QS sales in which not less than ten percent (10%) of the QS is sold to one or more Crab Crewmembers and the remaining balance of the QS is sold to one or more Active Fishermen.

2. QS sales made in connection with a foreclosure of a security interest or pursuant to a court order.

3. QS sales made in connection with the sale of a Bering Sea or Aleutian Islands crab fishing vessel, or as part of the sale of an entire commercial Bering Sea or Aleutian Islands "Crab Fishing Business". A "Crab Fishing Business" means a fishing business that owns QS and one or more fishing vessel(s) that were employed to harvest crab in a Program crab fishery during the year prior to the sale of the business. A sale of all or substantially all assets of a Crab Fishing Business, or sale of all or substantially all of the ownership interest in a Crab Fishing Business are both exempt under this provision.

4. QS transfers or sales between "Affiliated" business entities. Business entities in which the same person holds a ten percent (10%) or greater voting interest or ownership interest are "Affiliated".

5. Transfers of a direct or indirect ownership interests in a business entity between or among existing owners.

6. QS transfers or transfers of ownership interest in QS holding entities that are made under a contract that was in effect as of May 29, 2012.

Crab Crewmember and Active Fisherman Failure to Perform. In consideration for the benefits extended to Crab Crewmembers and Active Fishermen under the ROFO, each of them has an obligation to perform their in connection with the closing and purchase of any QS they agree to buy under the ROFO. The ROFO Administrator has the right to permanently remove a person from the Crab Crewmember or Active Fisherman lists if they make an offer and then fail to perform.

Member Failure to Perform. If a Member fails to comply with the ROFO, they are in breach of the ICE Membership Agreement. Because the damages associated with a ROFO breach are difficult to quantify, a Member who fails to comply with the ROFO is liable for “liquidated damages” in an amount equal to ten percent (10%) of the amount paid for QS sold.

No Assignment. The rights granted to Crab Crewmembers and Active Fishermen under the ROFO procedure are personal, and may not be assigned. Any purported assignment is void.