

Golden king crab arbitration workgroup meeting
Nordby Conference Room, Fishermen's Terminal, Seattle, Washington
North Pacific Fishery Management Council
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Participants – Duncan Fields, Joe Sullivan, Dick Tremaine, Brett Reasor, Mark JoHahnson, Larry Cotter, Mark Fina, Greg White, John Iani, Elizabeth Wiley, Jill Capri, David Capri, Andrew Richards, Bing Henkel, Rip Carlton, Linda Kozak, Dick Powell, Steve Minor, Jake Jacobsen

The committee started with introductions, a review of the agenda, and a review of the minutes of the previous meeting. The committee suggested at a reasonable goal for the meeting would be a review of the documents and data included in previous mailings and a discussion of the overall positions of the respective participants.

The group briefly discussed the application of the standard and the breadth of considerations. The group generally agreed that a fair application of the standard should result in a formula under which persons making reasonable business decisions should be able to succeed in the fishery. It was suggested, however, that considering only the historic division of first wholesale revenues may not create a circumstance under which all participants can succeed in the fishery. This is not to say that the formula should be applied to ensure that any entering individual should be absolutely protected by the standard, but that application of the standard at the sector level should protect members of the sector exercising reasonable business judgment.

The committee discussed the data available for establishing the historical division of first wholesale revenues. The primary data set is COAR. The committee also discussed the processor survey conducted by John Sackton in 2007, as well as data that were voluntarily advanced by one processor during negotiations soon after implementation of the program. Committee members acknowledged that these data have some error (as suggested by the recovery rates that may be generated by COAR data), but the degree of error and its effects on any estimation of the historical division of first wholesale revenues are not settled. The committee did not agree on a specific historical division of first wholesale revenues. Specific data presented at the meeting suggested that the historical division of revenues in the fishery is between 48 and 49 percent. No data inconsistent with this interpretation were presented. The committee also agreed that the standard establishes the historical division of first wholesale revenues as only a starting point for establishing a formula and that the various other considerations included in the formula could justify deviating from that percentage when appropriately justified. It was also acknowledged that the formula acts as a failsafe and that parties are able to and some have agreed to use non-arbitration formulas.

Given the relatively narrow range of percentages that seem to be supported by the available data and concerns related to formulas that have been generated under the standard, the committee agreed to consider other issues that might be relevant under the standard. The committee agreed that identifying a list of relevant issues could be used to facilitate discussions of the formula. The result was the following list:

- 1) Differential pricing of Western fishery crab and Eastern fishery crab – these differences could arise from differences in quality and size of crab and from added harvesting and processing costs that might arise from the West region landing requirement

- 2) The need for pricing that protects harvesters during periods of relatively low market prices, along with a commensurate recognition that processors might recoup some of the costs associated with providing that protection during periods of high market prices
- 3) A concern that establishing a price based on a division of first wholesale revenues may result in an incentive for processors to move product quickly (including presales of products) to avoid holding and marketing costs. Consideration could be given to establishing a distribution of returns from marketing that creates incentives for processors to exert reasonable marketing efforts. In developing such incentives it should also be recognized that holding and timing of sales of product are affected by several factors beyond the incentives arising under the standard. This concern might be addressed by development of a system that provides for shared risks or a system that results in early season final ex vessel price settlements under which subsequent risks and rewards are borne by the processor.
- 4) Harvester risks, including requirements to fully harvest allocations and fishery investments could be a relevant consideration under the standard.
- 5) Any formula should recognize the golden king crab fishery operations independent of operations in other fisheries, rather than as ancillary operations that may be subsidized by operations in other fisheries.
- 6) In considering the health of the harvesting and processing sectors, the formula should consider the sector generally (as opposed to each individual); however, the formula should consider that each sector is made up of a variety of different participants, including vessel and plant operators some of which lease shares, quota holders that hire custom processing services, recipients of initial allocations, and new entrants. These different circumstances might be addressed under the formula.
- 7) The application of a formula dependent on first wholesale prices could justify the development of a system for verifying those prices.
- 8) The system should be developed in a manner that provides for comparison of market performance across processors to ensure that processors have an incentive to perform at a reasonable level in the first wholesale market.
- 9) The formula could consider changes in cost structures that might affect returns from the fishery for either sector. Changes that might dictate a change in the formula could be defined.
- 10) The committee acknowledged that the arbitration system is intended as a backstop for failed price negotiations. Consequently, it may be expected that prices will vary across processors for a number of reasons including differences in market prices and cost factors. These discrepancies may result in prices above and below the price that may be dictated by strict application of a formula. Discrepancies, however, are not intended to simply provide leeway for either side to simply demand a higher (or lower) price, but to support reasonable price fluctuations that arise from vagaries in the fisheries and markets. Chronic poor performance or failure to exercise good business judgment from a participant should not justify price adjustments.

It was also suggested that the effects of consolidation within a sector on the other sector's costs in and returns from the fishery could be considered. Potential for changes in yields or recovery rates were also suggested to be relevant in the formula.

The committee agreed that at the next meeting each side should be prepared to advance proposals for defining the formula. These proposals should clearly define the basis for pricing under the formula (e.g., first wholesale revenues or rents) and a process for establishing that basis. To the extent relevant, the proposals should address the listed factors; however, the rationale for any adjustment to the formula (and

its magnitude) should be provided and supported by data to the extent feasible. It is recognized that quantification of some considerations may not be possible, but that reasonable justifications should be advanced for any factors that should be considered. The meeting will be initiated by the processors presenting a proposal that could be countered by the harvest sector.

The committee generally agreed that the next meeting could require up to 3 days. The committee discussed potential meeting dates and agreed that a poll of possible dates after April 18 and through the month of May would be appropriate for to select meeting dates conforming to the schedules of all committee members.

Attachments available upon request from the Council office.