

December 2013
Agenda Item C-9

December 3, 2013

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

Dear Chairman Olson:

The following report is submitted under Council agenda item C-9 by Inter-Cooperative Exchange ("ICE"), a crab harvesting cooperative formed pursuant to 50 C.F.R. § 680.21. ICE is an Alaska cooperative corporation formed 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 190 members that hold catcher vessel owner ("CVO"), catcher vessel crew ("CVC"), catcher processor owner, and catcher processor crew quota shares ("QS") issued under the Bering Sea and Aleutian Islands ("BSAI") crab rationalization program implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs. ICE vessels fish approximately 70% of 2013-2014 BSAI crab 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 the available measures taken to address high 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 transfer made by an ICE member that does not fall within a specific ROFO exemption. The 2012-2013 ICE Membership Agreement ROFO provisions are included as an addendum to this report.

The 2012-2013 ICE Membership Agreement stipulated that ROFO provisions take effect 90 days after the ICE Board provides notice to that effect. The ICE Board issued that notice on February 1, 2013, and the ROFO formally took effect on May 2, 2013. However, ICE members voluntarily complied with the ROFO in connection with QS transactions that took place between February 1 and May 2, 2013.

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

Under the ICE ROFO, crew members receive a first priority right of offer to 10% of all QS sold by ICE members, unless the transaction falls within one of the ROFO exceptions (which are identified in Section 5.5 of the ROFO provisions). Active fishermen receive a second priority right of offer with respect to the other 90% of the QS being sold. 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 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 place high value on 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 more QS holders will take steps to meet the ICE membership eligibility standard over time. To the extent they do so, the amount of QS held by persons who meet the ICE FCMA active participation requirement will increase.

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 the ICE management's knowledge, no ICE member has transferred QS in breach of their ROFO obligations under the ICE Membership Agreement.

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 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 January 30, 2013 through November 10, 2013, there were 232 unique transfers of QS of all types from 44 unique QS holding entities. Forty-six (18.9%) of the transfers were to qualified crewmembers, and forty-two of those were transfers of CVC QS. As noted above, the transfers to qualified crewmembers were not subject to ROFO.

Of the remaining 190 transfers, 130 transfers were made by 27 ICE members, 45 were made by nine Alternate Crab Exchange ("ACE") member entities, nine were made by one member of the Dog Boat Cooperative and seven were made by two members of Alaska King Crab Harvesters Cooperative.

ICE members transferred a total of 27,180,621 QS units. Of these, 9,372,859 were subject to ROFO, and 17,807,762 were exempt from ROFO. Of all QS transferred, 1,703,618 units (or approximately 6.2% of all QS transferred and 18% of the QS transferred subject to ROFO) were purchased by six qualified crew members.

Members of all crab cooperatives transferred a total of 58,248,720 QS units since Jan 20, 2013. Of those units, 6,705,770 units (or approximately 11.5%) were purchased by qualified crew members. When sorted for quota type, and transfers from CVC holders are removed from the data set, the amount of CVO transferred is 57,157,782 QS units. Of that amount, 2,420,996 QS units (4.2%) were purchased by qualified crew.

4. What measures is the cooperative taking to address the issue of high lease rates, as they affect crew compensation? ICE has notified its members that the Council is concerned about the potential impact of high lease rates on crew compensation, and has asked that ICE members consider voluntarily capping their lease rate asks and offers at 65% of adjusted gross revenues for Bristol Bay red King crab and 50% of adjusted gross revenues for Bering Sea Snow crab. ICE will continue to notify its members accordingly.

5. What is the level of participation from cooperative members regarding these measures? ICE has not taken steps to verify the number of its members who have voluntarily limited their lease rate asks or offers.

6. How effective have these measures been? ICE has not taken steps to verify how effective these measures have been for the 2012-2013 crab fishing year. ICE believes the effectiveness of these measures is best evaluated by comparing the daily rate of pay received by crab vessel crew members prior to rationalization (adjusted to include pre and post season employment) to EDR data concerning the daily rates of pay received by crab crew members during the 2012-2013 fishing year. ICE looks forward to receiving that data, and will follow up with its members accordingly.

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 the ROFO program it has adopted. ICE will continue to notify its members regarding the Council's sensitivity to high lease rates as they may affect crew compensation, and will continue to request that members consider voluntarily restricting their lease rate asks and offers per paragraph 4, above. ICE will also continue to monitor EDR data as it becomes available, and will inform its members if crew member daily rates of pay reflected in that data suggest that the voluntary lease rate asks and offers are proving ineffective.

Addendum

Right of First Offer ("ROFO") Provisions
from the
ICE 2012-2013 Membership Agreement

5. Quota Share Right of First Offer. **The provisions of this Section 5 shall not take effect unless and until the ICE Board of Directors takes affirmative action to that effect. The provisions of this Section 5 shall take effect without further Member approval or action being required upon the ICE Board of Directors taking action to that effect and providing each Member with not less than ninety (90) days advance notice.**

5.1 Definitions. For purposes of this Agreement, the following terms shall have the following meanings.

5.1.1 "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.

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

5.1.3 "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 that is employed in support of commercial fishing as a tender or research vessel shall be considered a Commercial Fishing Vessel.

5.1.4 "Crab Crewmember" means an individual who (i) meets the Program "C" share recent participation requirements as of the Record Date, as the same may be amended from time to time; (ii) did not receive catcher vessel owner ("CVO") or catcher processor owner ("CPO") QS under the Program at initial allocation; and (iii) is named on the Crab Crewmember list that ICE maintains.

5.1.5 "Person" means an individual, corporation, partnership, limited liability company or other form of business entity.

5.2 Restrictions on Transfer. No Member shall sell any portion of his, her or its QS other than in strict compliance with the terms of this Agreement. Any sale of QS by a Member that is not made in strict compliance with the provisions of this Agreement shall be a material breach of this Agreement. For purposes of this Agreement, selling an ownership interest in an entity that holds QS and does not hold an interest in a Commercial Fishing Vessel shall be considered a QS sale, and an amount of

the QS held by the entity proportionate to the ownership interest being transferred shall be subject to the rights of first offer set forth in this Section 5.

5.3 Sales to Crab Crewmembers. A Member may sell some or all of such Member's QS directly to one or more Crab Crewmembers on such terms as the Member and the purchasing Crab Crewmember(s) may agree. Such sales shall not be subject to the rights of first offer granted under this Agreement.

5.4 Rights of First Offer. A Member who wishes to sell some or all of his, her or its QS to a person who is not a Crab Crewmember (a "Selling Member") may only do so in strict compliance with the procedure set forth in this Section 5.4, unless the transaction is exempt from the Crab Crewmember and Active Fisherman right of first offer pursuant to Section 5.5, below.

5.4.1 Before offering QS for sale to a person who is not a Crab Crewmember, the Selling Member shall notify ICE of the amount of QS offered for sale (the "Offered QS"), and the associated sale terms (the "Offer Terms").

5.4.2 Upon receiving notice from a Selling Member, ICE shall notify the Crab Crewmembers that ten percent (10%) of the Offered QS is available for purchase on the Offer Terms (such 10% being the "Crew Offer QS"). Each Crab Crewmember shall have fifteen (15) days from receiving such notice during which he or she may irrevocably agree to purchase some or all of the Crew Offer QS on the Offer Terms. 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, ICE shall 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.

5.4.3 Upon expiration of the 15-day Crab Crewmember offer period, ICE shall determine the amount of the Offered QS available for purchase, net of the amount that Crab Crewmembers have agreed to purchase (such remaining amount being the "Fisherman Offer QS"). The Selling Member may sell the Fisherman Offer QS to one or more Active Fishermen on such terms as the Selling Member and the Active Fishermen may agree. 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 shall first notify ICE, and ICE shall notify the Active Fishermen of the amount of Fisherman Offer QS that the Selling Member proposes 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. The Active Fishermen shall 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. 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, ICE shall 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 receive.

5.4.4 Upon expiration of the 5-day Active Fisherman offer period, ICE shall determine the amount of the Offered QS that the Crab Crewmembers and the Active Fishermen have agreed to purchase on the Offer Terms, and shall notify the Selling Member. The Selling Member

shall then have the right to offer the balance of the Offered QS in excess of the amount that the Crab Crewmembers and Active Fishermen have agreed to purchase (the "Marketable QS") for sale to persons other than the Crab Crewmembers and Active Fishermen (the "Third Parties") on terms no more favorable to the Third Parties than the Offer Terms for a period of one hundred eighty (180) days (the "Market Period").

5.4.5 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 shall notify ICE of the Accepted Offer and the proposed closing date for the related transaction, which shall not be earlier than twelve (12) business days from the date of such notice. Within two (2) business days of receiving such notice, ICE shall notify the Purchasing Crewmembers and the Purchasing Fishermen of the Accepted Offer and proposed closing date. Within ten (10) days of receiving such notice from ICE, each Purchasing Crewmember and Purchasing Fisherman shall deposit their share of any cash to be paid to the Selling Member at closing into escrow as directed by ICE, and shall execute and deliver into escrow as ICE directs any financial instruments and other documents consistent with the Offer Terms.

5.4.6 If the Selling Member transfers QS to one or more Third Parties in accordance with the Accepted Offer, the Selling Member shall notify ICE, and ICE shall notify the Purchasing Crewmembers, Purchasing Fishermen and direct the escrow agent with whom their funds and documents have been deposited to proceed with closing of the QS transfers from the Selling Member to the Purchasing Crewmembers and Purchasing Fishermen.

5.4.7 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 (if any) shall be void, the Purchasing Crewmembers and the Purchasing Active Members shall have no right or obligation to purchase any of such Offered QS, and the Selling Member shall not offer any QS for sale unless and until the Selling Member has repeated the first offer procedure set forth in Sections 5.4.1 through 5.4.3, above.

5.5 Transactions Exempted from Right of First Offer. Notwithstanding the foregoing, the following QS sales and transfers of interest in QS holding entities shall not be subject to the rights of first offer in favor of Crab Crewmembers or Active Fishermen described above.

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

5.5.2 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. For purposes of this provision, a "crab fishing business" shall mean 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. For purposes of this provision, "sale" of an entire Bering Sea or Aleutian Islands crab fishing business shall mean a sale of all or

substantially all assets of such business, or sale of all or substantially all of the ownership interest in such business.

5.5.3 QS transfers or sales between affiliated business entities. For purposes of this provision, business entities in which the same person holds a ten percent (10%) or greater voting interest or ownership interest are “affiliated”.

5.5.4 Notwithstanding the provisions of Section 5.2 to the contrary, transfers of a direct or indirect ownership interest in a business entity between or among existing owners.

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

5.6 Termination of Crab Crewmember and Active Fisherman Rights for Failure to Perform. In consideration for the benefits extended to Crab Crewmembers and Active Fishermen under this Agreement, each of them shall have an obligation of strict performance in connection with the closing and purchase of any QS they agree to purchase under the right of first offer that is extended to them under this Agreement. ICE reserves the right in its sole discretion to permanently remove a person from the Crab Crewmember or Active Fisherman lists maintained by ICE in response to any single breach by such person of his, her or its obligations under this Agreement.

5.7 Breach by a Member. A Member’s breach of the provisions of this Section 5 shall constitute a material breach of the ICE Membership Agreement. Because the damages associated with a breach of this Section 5 are not possible to quantify, a Member in breach of this Section shall be liable for such liquidated damages as the ICE Board of Directors adopts and announces to the Members from time to time, provided no such liquidated damages shall take effect until the next ICE membership period following their adoption and announcement. In addition to imposing liquidated damages in connection with a breach of this Agreement, the ICE Board of Directors may in its sole discretion take all actions and seek all remedies otherwise available to ICE and its members in connection with a breach of this Section 5.

5.8 Assignment. The rights granted to Crab Crewmembers and Active Fishermen under this Section 5 are personal, and may not be assigned. Any purported assignment of such rights shall be void. ICE may assign any or all of its rights and obligations under this Section 5 to such persons as ICE selects in its sole discretion.