

## **Exemption from regional landing requirements**

### **North Pacific Fishery Management Council**

#### **Council motion**

**October 2008**

The Council adopts the following purpose and need statement:

*In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require the associated catch to be delivered and processed in the designated region. Periodically, including at times in the first three years of the program, harbors in the Northern Region as defined in the program, are closed by the advance of the Bering Sea ice pack. These ice conditions have disrupted the crab fishery, contributing to safety risks and preventing harvesters from entering harbors to deliver to shore-based and floating processors located in the region, as required by the regional share designations. In addition, other unforeseeable events, events such as an earthquake or tsunami, or man-made disaster, could prevent deliveries or limit the available processing capacity in a region necessary for compliance with the regional designations on Class A IFQ and IPQ. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing requirements. Such an exemption should also provide a mechanism for reasonable compensation to communities harmed by the granting of the exemption to ensure that the community benefits intended by the regional designations continue to be realized despite the exemption.*

The Council adopts the following alternatives for analysis:

#### **Alternative 1 – Status quo**

#### **Alternative 2 – Contractually Defined Exemption**

##### **Method of defining the exemption and compensation:**

The exemption shall be generally defined in regulation. To receive an exemption, however,

- 1) an IFQ holder the holder of matched IPQ, and the entity holding (or formerly holding) the right of first refusal for the IPQ, or
- 2) an IFQ holder the holder of matched IPQ, and an entity identified by the community benefiting from (or formerly benefiting from) the right of first refusal for the IPQ, or
- 3) an IFQ holder the holder of matched IPQ, and a regional entity agreed to by the communities benefiting from rights of first refusal (or formerly benefiting from rights of first refusal) in the designated region of the IFQ and IPQ,

shall have entered a contract that defining conditions under which an exemption will be granted and the terms of any compensation that:

**Suboption 1:** may more specifically define circumstances that will qualify (or not qualify for the exemption) and/or

**Suboption 2:** defines any compensation that may be exchanged by the IFQ holder, IPQ holder, and any regional/community entity identified in the contract on using the exemption.

### **Administration of the exemption**

**Option 2:** The exemption shall be administered through submission of an affidavit by the holder of the IFQ for which the exemption is applied. An affidavit attesting to the satisfaction of requisite conditions for the exemption (as agreed in the contract) shall constitute conclusive evidence of qualification for the exemption.

### **Definition of the exemption**

**Qualifying circumstance:** An unavoidable circumstance that prevents the delivery or processing of crab in a region as required by regionally designated IFQ and matched IPQ will qualify for the exemption from regional landing requirements. To qualify for the exemption a circumstance must: a) be unavoidable, b) be unique to the IFQ and/or IPQ holder, c) be unforeseen or reasonably unforeseeable, and d) have actually occurred.<sup>1</sup>

**Option:** Additional specificity of the exemption and its term will be included in any contract between the IFQ holder, the holder of matched IPQ and the entity representing region/community interests.

### **Mitigation requirements**

#### **Requirement to attempt to mitigate:**

**Option 1:** To receive an exemption the IFQ holder and the holder of matched IPQ shall have exerted all reasonable efforts to avoid the need for the exemption, which may include attempting to arrange delivery to other processing facilities in the designated region unaffected by the unavoidable circumstance, attempting to arrange for the use of IFQ (and IPQ, if needed) not requiring delivery in the affected region, and delaying fishing.

**Option 2:** An IFQ holder will not be granted an exemption, if the IFQ holder holds any unused Class B IFQ, C share IFQ, or Class A IFQ that may be delivered outside of the affected region.

### **Compensation**

**Option 2:** Compensation shall be as agreed in the contract among the IFQ holder, the holder of matched IPQ, and the entity representing regional/community interests.

The Council requested that the analysis discuss 1) the potential for establishing satisfaction of detailed legal definitions or standards to pose safety risks and 2) the potential for the use of contractual provisions (including compensation requirements) to prevent abuse of the exemption.

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<sup>1</sup> These criteria are taken from the exemption to 'cooling off' provision landing requirements that applied on a community basis to some IPQ in the first two years of the program (see 50 CFR 680.42(b)(4)(ii)).