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## **Crab Advisory Committee Meeting Minutes July 31, 2007 Iliamna Room Anchorage Hilton**

Committee Members – Jake Jacobsen, John Iani, Mike Woodley (by phone), Lenny Herzog, Rick Shelford, Clyde Sterling, Rob Rogers, Dave Hambleton, Phil Hanson, Louie Lowenberg

Staff – Mark Fina (NPFMC), Glenn Merrill (NMFS SF), Jessica Gharrett (RAM), Clydina Bailey (RAM), Herman Savikko (ADFG), Stephanie Moreland (ADFG), Earl Krygier (ADFG)

Public – Einar Sorvik, Joe Plesha, Linda Kozak (by phone), Steve Minor, Margo Posten, Brent Paine, Dave Fraser, Margaret Hall, Arni Thomson, Kristy Despars, Pat Hardina, Jeff Stephan (by phone), Kris Dean (by phone), Steve Grabacki, Stephanie Madsen, Heather McCarty

### **Minutes**

#### **Previous meeting's minutes**

The committee reviewed minutes from the June 20<sup>th</sup> meeting, approving those minutes with minor changes. The committee identified the following items that it wished to revisit:

- a) specifying a timeline for initiation and completion of arbitration using the lengthy season approach
- b) timeline for share matching and initiation of arbitration – discuss whether substitution of ‘business days’ for ‘calendar days’ is an appropriate change

Both of these items are discussed further below.

#### **Report to the Council**

The committee agreed that a two-part report would be submitted to the Council. The first part of the report would identify areas of consensus, including suggested regulatory amendments. The second part of the report would summarize discussion of other issues by the committee to inform the Council concerning issues discussed by the committee.

#### **Discussion of Transfer Issues with RAM Staff**

The committee received a report from RAM on “On-line Transfer Procedures for Inter-cooperative IFQ Transfers,” a copy of which is attached. RAM staff also reviewed the issues raised by the committee in the document “Transfer issues for discussion with RAM,” which is also attached. That document is annotated with brief summaries of RAM responses.

#### **Regulatory Issues**

##### **Timeline for initiation and completion of arbitration using the lengthy season approach**

The committee revisited the discussion concerning the ambiguity in the current regulations concerning time limits on arbitrations conducted under the lengthy season approach. The committee confirmed that for fisheries, other than the brown king crab fisheries, initiation of arbitration prior to the end of the crab fishing year on June 30<sup>th</sup> would be timely, provided the proceeding is finalized by July 31<sup>st</sup>. this timeline would allow the outcome to be provided to the formula arbitrator for consideration in developing the following year’s non-binding price formula. In the brown king crab fishery (which opens August 15<sup>th</sup>) the committee agreed that proceedings should be initiated by May 31<sup>st</sup> and completed by June 30<sup>th</sup>, to ensure that the outcome would be available to the formula arbitrator for the following season.

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### *Possible amendment*

No amendment is suggested. The suggested timelines can be implemented by the arbitration organizations and arbitrators.

### Compressed time for share matching and initiation of arbitration

Under the current regulations and TAC announcement schedule, the share matching and arbitration initiation time periods for most fisheries are compressed into a very tight time period. All pre-arbitration share matching and initiation of arbitration proceedings for the Bristol Bay red king crab, the Bering Sea *C. opilio*, the Bering Sea *C. bairdi*, the Pribilof red and blue king crab, and the St. Matthew Island blue king crab fisheries takes place during a single 15 day period. Possible solutions could be to extent the length of these periods or to alter season openings for some fisheries to stagger these periods for the different fisheries.

At the last meeting, the committee reached a consensus that simply stating these periods as “business day” periods, rather than “calendar day” periods would relieve some of the time pressure. The committee was concerned that changes in season openings because those changes could limit changes in fishing practices that could be desirable in the future. The committee also elected to avoid substantial changes in the timing of these periods, which could affect the balance of interests under the current system. Some committee members expressed an interest in reconsidering this issue during the discussion of the minutes from the last meeting. These members believed that the further encroachment of negotiations on the season by extending share matching and arbitration could be problematic, particularly in the Bristol Bay red king crab fishery. Given the concern for extending share matching into the season, the committee agreed that no amendment is needed.

The committee discussed incorporation of additional checks in sharematch.com that provide more complete and timely notice of offers and commitments to persons involved in share matching. The committee also discussed the need for members of both sectors to track share matching closely during the share matching period.

### *Possible amendment*

No amendment is suggested.

### Staleness of the market reports

The current requirement that market reports be complete at least 50 days prior to the season prevents the inclusion of the most current and relevant pricing information in the report. In addition, the prohibition on supplements to the report prevents modification of the requirement to provide useful market information in season or after completion of the initial report. The committee discussed the antitrust concerns that contributed to the scheduling defined by the existing rule. Committee members agreed that the reports could rely exclusively on publicly available information, which would allay antitrust concerns related to report timing.

### *Possible amendment*

The regulatory amendment could generally provide that at least 50 days prior to a season opening, the arbitration organizations representing at least 50 percent of the PQS holders and at least 50 percent of the unaffiliated QS holders are required to reach an agreement for the provision of a market report (which may include supplements at any time prior to the end of the season). The market report will utilize only publicly available information. Such an amendment would provide the arbitration organizations with the most latitude to define a market report that will best serve participants in a fishery.

### Data issues arising in arbitration

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Two data issues were discussed by the committee. First, it was suggested that a harvester should receive limited first wholesale price information from a processor to whom it has committed deliveries to better facilitate negotiations. This information is suggested to be needed to allow harvesters to effectively negotiate prices with processors. Transparency in pricing is suggested to be necessary for verification of in season prices. As a part of this issue, it is suggested that a system for verifying information submitted in arbitration is necessary. Verification could be especially problematic for processors, who cannot see each other's data, when those data are submitted by harvesters in arbitration. A system for ensuring accuracy of sales in season could be beneficial. Committee members agreed to discuss this issue with other participants to determine whether reasonable accommodations could be made without further consideration by the committee.

The committee also discussed the need for improving data for defining the historic division of revenues. Currently, COAR provide the best data and have been used by the formula arbitrator to develop the price formula in the preseason. State representatives at the meeting briefly reviewed the process for submission of COAR data and some issues with reliability. For example, COAR data may be overbroad (including data from fisheries other than the intended fishery). COAR data are not well defined by region, limiting their utility for identifying differences in prices across regions. In addition, COAR are not audited, raising issues with reliability. Committee members expressed a general belief that historic ex vessel prices could be reliably determined using data available to both sectors, which could be compared with public sources. In some instances, bonuses and post-season adjustments might be missing from some sources, but reliable estimates of historic ex vessel prices could be generated. Development of a time series of historic first wholesale prices would be more complicated. Any data would need to undergo some audit process and would need to be collected on an individual basis from processors. These data would need to be aggregated for release. Committee members also expressed some concern that the variety of product forms and recovery rates could complicate generation of historic first wholesale prices. The committee agreed that the years that should be considered for generating historic first wholesale prices should be those currently used. Recognizing the complications, committee members agreed to develop proposals identifying a process for the development of historic division of first wholesale revenues for consideration by the committee, as a whole, at the next meeting.

### Delivery of 'highest arbitrated outcome' to the formula arbitrator

Under the current regulation, the formula arbitrator is required to consider the 'highest arbitrated outcome' for the proceeding season when developing the non-binding formula. The regulation does not provide an explicit mechanism for delivery of the 'highest arbitrated outcome' to the arbitrator. NMFS currently provides the formula arbitrator with the arbitrator's finding and the last best offer submissions (including supporting materials) of all parties to the arbitration for this purpose. NMFS has suggested that the arbitration organizations deliver these materials to the formula arbitrator to streamline that process. Committee members generally agreed that the current practice is appropriate and should be continued.

### *Possible amendment*

No amendment is suggested.

### **B share use**

The committee received a brief report from Steve Minor concerning uses of B share and C shares in the first two years of the program. A copy of the report is attached. The analysis in the paper used fish ticket data from several processors. The paper asserts that a relatively small amount of the B/C share allocation was used for deadloss (less than 1 percent of B share pool) in the first two years of the program. In addition, the report suggested that overages have posed little problem in the first two years of the program, and suggesting few B shares have been used to cover overages. The paper also suggested that use of B shares to address logistical complications has not prevented B share landings from drawing a

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premium price. The report identified some B share price premiums paid during ice events and after the Steller Sea fire to support this conclusion.

The committee disputed whether decisions to use B shares to achieve efficiency in harvest operations is an intended use of B shares under the program. Processors assert that this use works to harvesters advantage. Harvesters asserted that these decisions are compelled by the restrictive delivery restrictions in the program (i.e., regional and IPQ delivery requirements). Processors identified cases of split deliveries (offloading A shares with one processor and B shares with another) as evidence that B shares can be used to stimulate competition, despite harvesters need to achieve harvest efficiencies. Harvesters suggested that the current small quotas prevent use of B shares for anything but topping off loads of A share deliveries. Harvesters also identified full loads of B shares that were used to address logistical complications arising from the Steller Sea fire as evidence that B shares must be reserved for contingencies. Harvester suggested that the time needed to process transfers prevented use of transfers to address delivery complications arising from that circumstance.

Harvesters also asserted that coordination of landings is difficult with preseason A share commitments to IPQ holders. Changes in commitments have efficiency costs as vessels must change delivery locations. It was generally agreed that effectively addressing coordination problems would require contributions of both IFQ and IPQ holders.

### Additional Issues

The committee briefly discussed the potential for relief from regional delivery requirements to address complications that arise. The committee agreed that this discussion is beyond the scope of the committee's current direction from the Council. The committee suggested that if it considers these issues, members of communities should be included in that discussion. The committee agreed that discussions of potential relief from regional delivery requirements be delay until after the October Council meeting and further direction from the Council.

Committee members also agreed to put additional effort into gathering information concerning the use of B shares. Committee members asserted that accessing information has been difficult, as participants have been distracted by finalizing price negotiations from last year and preparing for next season.

The committee also agreed that additional input is needed from participants in the brown king crab fishery. Both sectors agreed to solicit additional input from participants in those fisheries concerning the uses of B shares in those fisheries in the first two years of the program and whether those uses are consistent with Council intent.

### **Next meeting**

9 a.m. on September 5<sup>th</sup> in Seattle.

The specific meeting location will be announced in the near future.

The meeting agenda will be developed by the committee chairs and staff for review by the committee.

### **Tasks for next meeting**

All committee members agreed to:

- 1) submit suggestions for developing data for estimating the historic division of first wholesale revenues,
- 2) provide additional information concerning the uses of B shares during the first two years of the program,
- 3) solicit input from participants in the brown king crab fishery concerning the uses of B shares for the next meeting, and

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- 4) provide suggestions for ways to address coordination problems that have prevented the use of B shares for their intended purposes.

### **Attachments**

- 1) “On-line Transfer Procedures for Inter-cooperative IFQ Transfers” from RAM
- 2) “Transfer issues for discussion with RAM” from the Committee (includes annotation of RAM responses)
- 3) “The Unintended Use of B/C Shares: An examination of the fish ticket data for the 2006/7 season” from North Pacific Crab Association (Steve Minor)

**The Unintended Use of B/C Shares**  
**An examination of the fish ticket data for the 2006/7 season**  
**North Pacific Crab Association - Fish Ticket Data Analysis**

*Overview*

At the request of the NPFMC's Crab Advisory Committee, the North Pacific Crab Association has examined and aggregated the fish ticket data for the 2006/7 BBRKC and Opilio seasons<sup>1</sup> to establish (a) to what extent B/C shares were used for deadloss and overages and (b) what the underlying causes of that use may have been.

We have aggregated the data to conform to the basic confidentiality guidelines established by the State of Alaska and the NPFMC. We also examined the data within the context of current regulations concerning the use of B/C shares. The data is presented on the following pages. In summary, we believe the fish ticket data, considered within the context of current regulations, points to these conclusions:

1. The decision to use B/C shares for overages or deadloss is exclusively the vessel managers, so it is difficult to define what "unintended use" really is. We will show that not only is the use of B/C shares for deadloss and overages a unilateral vessel management decision; the economic framework of the program gives the vessel manager strong incentive and considerable leeway to allocate B/C shares for their "highest and best use", and we believe they are exercising that privilege without restriction.
2. The analysis shows that the use of B/C shares for overages and deadloss can largely be explained by these common practices:
  - a. An entire delivery (which utilized B/C shares for overages or deadloss) is comprised of B/C shares, which have been stacked to take advantage of a particular price agreement.
  - b. Most vessel deliveries are now comprised of several classes of IFQ (A, B, C and/or CDQ), which are also likely held by a variety of owners. Therefore, all deadloss and/or overages are allocated across all quota types on a prorated basis for that particular delivery, as you would expect, so that all parties bear this "cost" equitably.
3. The anecdotal claims that a significant quantity of B/C shares have been used for unintended purposes are not borne out by the data; further, to the extent that B/C shares have been used to respond to events like the Steller Sea fire, those related deliveries appear to have been "shopped around" for the best B share price, so the net result has been consistent with Council intent.

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<sup>1</sup> NPCA Members submitted their fish ticket data after first removing all references to ex-vessel prices.

4. The average annual B share allocation to an unaffiliated vessel is estimated to be approximately 13% rather than 10% because affiliated vessels cannot receive B shares. This result in (a) additional leverage and opportunity and (b) a further lessening of any real or perceived impact.
5. Some program design flaws have exacerbated delivery issues, including low processor use caps in remote or small-TAC fisheries, and the lack of real-time and/or post-delivery transfers. *The Council and/or Congress are currently addressing all of these issues.*
6. “Overage” incidents – which are triggered when a vessel exceeds it’s IFQ and therefore have nothing to do with IPQ holders – are referenced as one of the two reasons that the Council needed to review the “unintended” use of B/C. The recent Council staff report related to post-delivery transfers shows that the frequency of overages is so rare that we believe this should be disregarded as a significant issue. Nonetheless we will provide additional data concerning “overages”.
7. In conclusion, we believe that the unintended use of B/C shares is not borne out in the data, and that any “unintended” use of B/C shares outside of the reasons given above can be solved by the harvest sector by forming coop reserve pools and more efficient intercoop transfer mechanisms.

**Table 1**  
**2006/7 Opilio Landings Data from Fish Tickets**

Total pounds analyzed	26,952,419	
TAC excluding CDQ and CP	29,937,681	
<i>Percent of TAC analyzed</i>		<b>90.0%</b>
A share component (pounds)	23,780,355	
A share component (percentage)		88.2%
B/C share component (pounds)	3,082,074	
B/C share component (percentage)		11.4%
Average estimated B share holdings by each unaffiliated vessel		13.0%
Use of B/C shares for deadloss:		
<b>Total pounds of B/C shares used for deadloss in this analysis (89.6% of quota)</b>		<b>29,318 pounds</b>
<b>B/C share deadloss use as a percentage of B/C share pounds analyzed</b>		<b>0.951%</b>
<u>For comparison:</u>		
A share use for deadloss		276,101 pounds
A share deadloss percentage		90.4%
B share deadloss percentage		9.6%

**Table 2**  
**2006/7 Bristol Bay Red King Crab**  
**Landings Data from Fish Tickets**

Total pounds analyzed	12,226,966	
TAC excluding CDQ and CP	13,342,661	
<b><i>Percent of TAC analyzed</i></b>		<b>91.6%</b>
A share component (pounds)	10,801,405	
A share component (percentage)		88.3%
B/C share component (pounds)	1,318,771	
B/C share component (percentage)		10.8%
Average estimated B share holdings by each unaffiliated vessel		13.0%
Use of B/C shares for deadloss:		
Total pounds of B/C shares used for deadloss		<b>4,393</b>
<b>B/C share deadloss use as a percentage of B/C share pounds analyzed</b>		<b>0.33%</b>

For comparison:

A share use for deadloss	78,642 pounds
A share deadloss percentage	94.7%
B share deadloss percentage	5.3%

## *Discussion and analysis*

Since B shares are to be used solely at the discretion of the harvester, what constitutes “unintended use”?

The use of B-shares is entirely up to the discretion of the B-share IFQ holder. Their exclusive control of B shares is reinforced by at least two specific prohibitions against processor influence over the use of B shares:

*HR 2673 Title III, Sec. 801 (j)(2)* If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery “B shares”, the processor’s Individual Processor Quota shall be forfeited.

*FFR 680.7 (f)* (It is unlawful for any person to do the following)...Use IPQ as collateral or otherwise leverage IPQ to acquire an ownership interest in Class B IFQ.

It is worth noting that at least one significant IPQ holder has not actively sought to purchase any B share crab from the fleet because of the severe consequences of a detrimental ruling under HR 2673 Title III, Sec. 801 (j)(2), above.

Clearly then, individual B share holders have complete discretion to use B shares for their “highest and best use” at any given moment, including pre-season price negotiations to leverage A share prices higher. Testimony by John Sackton that the “system is working just the way it should<sup>2</sup>” seems to indicate that B shares are being used as intended. So, if B shares are being used to cover events like deadloss, overages and unanticipated events (a claim we will examine later) then it must be assumed that there is a rational reason for this behavior, ie – the harvester(s) perceived these other uses as the highest value for B shares at that time.

For instance, in the previous meeting of the Crab Advisory Committee, one harvest sector member pointed out that he often used his B shares to “top off” the vessel when it had a large load of A shares because the cost of fuel and operations was such that a separate trip to harvest B shares (or supposedly, to lease to another vessel), did not “pencil out” to be worth the effort. Clearly, that harvester was making a rational economic decision within the context of his business.

Another harvest sector representative on the committee pointed out that it was a bit of a stretch to claim that short-term ice-events were really an “unintended and unforeseen” event, because ice events have always been a major characteristic of the BSAI crab fisheries. If there is any “unintended use” of B shares because of ice events, we think they will be resolved by improved management measures already in development (inter-coop exchanges, reserve pools, real-time transfers and post-delivery transfers).

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<sup>2</sup> John Sackton, NPFMC testimony, April 2007.

## The Economic Incentives and Impacts of Exclusive Harvester Use of B/C Shares

Under the new rationalization program, the allocation of the deadloss to the various classes of quota has different impacts. For instance, if a vessel allocates deadloss to “A” shares, it is counted against the harvesters A share IFQ but it also has the potential to “strand” the matched processor IPQ, resulting in lost pounds to that processor. In fact, since this TAC system is a net sum game, at the end of the season all aggregate harvester A share deadloss effectively “strands” a matching amount of processor IPQ; thus, both parties have been penalized by the harvesters exclusive decision to allocate deadloss against A shares. The allocation of deadloss to A shares is almost always the option chosen by the vessel because B, C and CDQ shares usually receive a higher ex-vessel price.

But there are non-price exceptions to this behavior. For instance, if a vessel is concurrently fishing multiple share types for a number of permit holders (which is almost always the case), then the deadloss is often spread pro-rata against all of the share types utilized for that delivery. This makes sense if one or more of the multiple-IFQ types aboard are being fished under lease or royalty agreements, so that each IFQ holder is allocated a prorated share of the “costs” and the benefits.

As we have seen, there has been rapid (and often controversial) consolidation of the harvest sector under the crab program, resulting in significant quota stacking, leasing and cross-leasing. The net result is that it is rare that a vessel is only fishing its own IFQ. We believe that the data supports our position that deadloss is often allocated to B/C shares simply because the vessel is in fact landing multiple IFQ types, held by multiple IFQ owners. Again, the decision to allocate deadloss or overages against the accounts of all quota types and owners in these circumstances makes sense.

We have shown that the allocation of deadloss is a decision made by the harvester, not the processor. The charge that there is “unintended” use of B shares to cover deadloss is therefore troubling; nonetheless it should also show up in the data as “significant use” of B or C shares, rather than A shares.

The data used for this analysis is taken directly from fish tickets, aggregated for confidentiality. The aggregated data represents 91.6% of the 2006 Bristol Bay Red King Crab fishery and 89.6% of the 2006/7 Opilio fishery, excluding CDQ and CP shares (see Table 1 and Table 2). The data was collected from the top eight crab processors in each fishery.

A preliminary review of the data indicates that, contrary to presentations made to the Council, and in spite of the lack of sophisticated coordination amongst harvesters, there is no significant use of B (or C) shares for deadloss<sup>3</sup>.

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<sup>3</sup> Table 1, Page 3 and Table 2, Page 4

## Overages

The Council has been told that B shares are also being used to deal with vessel overages. Overages occur when a vessel attempts to deliver more crab than it has IFQ available to deliver. *This is strictly a vessel catch management issue, with no processor cause or input.*

When it established voluntary cooperatives, the Council specifically set up a system to minimize or eliminate overage issues. “The aggregate allocation of shares to a cooperative also has benefits for participants. Overage/underage provisions are typically considered when implementing share based programs. In both IFQ and cooperative fisheries, stiff fines and penalties are imposed on entities that exceed their allocations. *When several quota shareholders can combine their allocations in a cooperative, it creates an opportunity for the cooperative to mop up remaining quota from all members by allowing one vessel to make a final trip when it would not have been economically feasible for several vessels to do so individually*”.<sup>4</sup>

If a vessel triggers an “overage” violation of less than 3% of its available IFQ for that trip, then the crab is simply forfeited to enforcement. If the vessel violation involves more than 3% of available IFQ, the crab is likewise forfeited but there can also be a financial penalty.

“Overage” events are actually relatively rare, as shown in the table below<sup>5</sup>. *There have only been sixteen (16) overage events for all fisheries combined in the first two years of the program.*

Table 1. Preliminary estimates of overages and landings by fishery (2005-2006 season).

Fishery	Number of participating vessels	Number of landings	Number of overages	Number of overages exceeding 3 percent	Weight of overages	Percent of landings with overage
Bristol Bay red king crab	89	255	8	4	10,912	3.1
Bering Sea <i>C. opilio</i>	78	301	6	*	8,294	2.0
Western Bering Sea <i>C. bairdi</i>	43	73	1	0	*	1.4
Eastern Aleutian Islands golden king crab	7	32	0	0	0	0.0
Western Aleutian Islands golden king crab	3	42	1	*	*	2.4

Source: NMFS RAM IFQ database, crab fishing year 2005-2006.

\* withheld for confidentiality.

Even these infrequent overage events could be eliminated by “post delivery transfers”, a program amendment which the Council has already taken up for consideration<sup>6</sup>. This is strictly a harvest management problem which should cure itself in due time. And again, there is no linkage to the A-share/B-share split.

<sup>4</sup> Final EIS/RIR, Appendix 1, Page 328

<sup>5</sup> NPFMC Staff Report to Council, June 2007

<sup>6</sup> December 2006 NPFMC meeting

## Ice Events

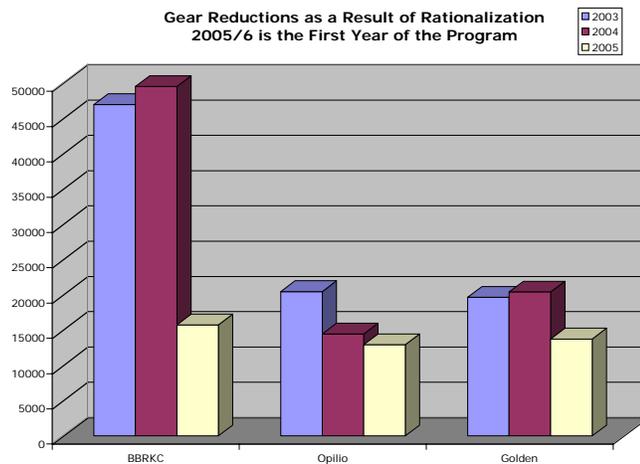
Every few years, ice events close crab fishing grounds and occasionally St. Paul harbor. For the record, there have been three closures of St. Paul harbor since 1999; each lasting less than a week. But it is also important to understand that large ice events also close most of the crab fishing grounds, often over-running gear and creating significant disruption to all sectors.

These short events were referenced as another reason that B shares were being held back for “contingencies”. Setting aside the most salient point already put forth at the committee: that ice events are simply a characteristic of these fisheries - it is worth looking at actual behavior on the grounds – both pre and post rationalization – and the tools now available to manage these events, before accepting the false assumption that this is an A share/B share split issue.

Crab fishing often happens on or near the ice edge throughout the winter. These are often the most productive grounds, but as a result this fishery has earned its reputation as one of the most dangerous.

The fast movement of ice often results in gear losses for the fleet, and it always (obviously) closes the grounds over which it has extended. The new program has reduced this problem through an outright reduction of gear on the grounds as well as Cooperative pulling of gear. In other words, even if an ice event closes a harbor or processing facility temporarily, it has also likely closed the fishing grounds throughout the Northern Region. Thus, any immediate impact on a harvester would be limited to delivering the crab already on board.

Contrast that to the short season derby-style days we have just left behind, wherein the closure of grounds or loss of gear could ruin the entire season for a vessel. All of that has changed for the better.



Under the new program:

1. Vessels can pull off the grounds until the ice has retreated, and this past season many did so, choosing to fish pot cod during the interim period. In fact, it is important to note for the record that fully 60% of the active crab fleet registered for the 2006/7 Opilio season also had pot cod endorsements; given them

additional business flexibility; which will be further enhanced in the future as coops learn to operate in a more integrated manner.<sup>7</sup>

2. Vessels can swap quota to facilitate delivery of any crab already on board under this program, thus allowing a vessel with Northern Region IFQ to swap for Southern Region IFQ to complete deliveries during the event. Based on the AFA Pollock example and all of our pre-rationalization expectations, one would expect that the swaps could occur at the intra-cooperative level as well as the inter-cooperative level. But vessels and their cooperatives have not yet established a formal inter-cooperative exchange to do so, and we are not aware of any significant use of intra-cooperative reserve pools. This may be a symptom of how new the program is, or it may be a program design flaw that needs to be addressed by the Council (more on that below).
3. Cooperatives can set up “reserve pools” to address virtually any sort of delivery problem. Reserve pools are being used in the GOA rockfish fishery, for instance. Under this system, participating cooperatives would hold back some (small) portion of the collective IFQ as a reserve pool for any member to draw from to address delivery problems; the member who used quota from the reserve pool would compensate the other members; and any unused quota would be fished by a member at the end of the season in a “clean up” trip. Crab cooperatives have failed to establish reserve pools, in part because (we believe) of the “pass through” cooperative structure most harvesters have adopted (more on that below).

### *Steller Sea Fire*

The Steller Sea fire, though longer in duration than most ice events, presented the same challenges to the harvest sector. For an event like this, the harvest sector has before it the same remedies as outlined above: intra-cooperative and inter-cooperative exchange rights, and reserve pooling of quota. Again, both are examined in more detail below.

One of the reasons that the Steller Sea fire was not a more significant event was that 60% of the registered Opilio fleet also had pot cod endorsements, and many of those vessels were engaged in pot cod fishing at the time of the fire. We have closely examined the Opilio crab registered vessel list against the pot cod endorsement list for 2006/7, and have found that 48 vessels (out of a registered fleet of 80 vessels) had pot cod endorsements; given the overlap of these seasons and the fact that many crab harvesters had not yet settled on an ex-vessel price with their processor at the time of the Steller Sea fire (January 16), there was very little actual crab fishing taking place, and therefore the claims that vessels were “stranded with Northern Region crab on board” seem highly inflated.

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<sup>7</sup> NPCA has analyzed and cross-checked the official record of vessels registered for the 2006/7 Opilio fishery and the official pot cod endorsement record. This analysis can be undertaken by anyone, and it is also available from NPCA.

As has also been stated by several members of the industry, to the limited extent B shares may have been used to facilitate deliveries ahead of schedule, it appears those B shares gravitated to the best price, just as intended.

All of these factors make any meaningful analysis of the data difficult, because cause and effect is so elusive. We would describe the situation in this manner:

1. Most of the opilio fleet was either tied up (in a price dispute) or fishing pot cod at the time of the Steller Sea fire.
2. The number of vessels on the grounds was minimal, but identification is difficult.
3. Any vessel on the grounds should have access to southern region or cdq quota to mitigate delivery issues so early in the season. The creation of an inter-coop or reserve pools would be the first place to look for a solution to future similar events.
4. Fish ticket data suggests that any significant B/C share deliveries made in the weeks immediately following the Steller Sea fire were made in response to B share price premiums; but confidentiality and anti-trust restrictions has limited our analysis.
5. If B/C share deliveries were made for prevailing B/C share premiums, not economic harm can be attributed to the event.

The Steller Sea fire event brought to light another program design flaw which Congress and the Council have already begun to address: inappropriately low use caps for remote fisheries that has created inefficiencies and thin operating margins. It should be noted that in late-2006, as part of the Magnuson Stevens Act, Congress authorized a “custom processing use cap waiver” for the Northern Region, which should significantly increase processing capacity while retaining processor ownership caps that guarantee multiple markets in the region. This should help further minimize the impact of these sorts of events in the future ... though a formal and efficient harvester-based transfer process is still the real answer, and it is already designed into the regulations.

If “unintended use” has occurred, what are the real reasons?

We have shown that the incidents of “unintended use” of B shares are rare, and in those cases where there may have been some use of B shares to respond to specific incidents, the decision has been exclusively that of the vessel owner/operator; and likely as a result of:

- A. Pro-rata allocation of deadloss to all classes of IFQ at the time of delivery to spread the “cost” to all IFQ holders represented in that delivery.

B. Because of a lack of harvest sector quota transfer programs and mechanisms.

In this section we will examine each issue in more detail.

*Pro rata allocation of deadloss*

Every vessel delivery is unique, ranging from “B share only” deliveries to mixed quota deliveries composed of A, B, C and even CDQ shares held by multiple parties. In addition, because of processor use caps, matching requirements and regionalization, a vessel may deliver to more than one facility on a single trip. The landings data confirms that some vessel owners choose to allocate deadloss on a prorated basis against all of the IFQ utilized for that trip. This makes a lot of sense, given the high lease rates, which currently characterize the fleet. Thus, this does not demonstrate “unintended use” of B shares for deadloss; rather, it is a symptom of fleet consolidation, under which a few vessels are fishing for many entities.

*Lack of harvest sector transfer programs and mechanisms*

The crab program is just two years old. There are significant pieces of harvest sector “business infrastructure” which are not yet in place; and which significantly hamper harvest sector transfers to deal with overages, ice events, vessel groundings, deadloss and other “unanticipated” events.

Among them are:

1. Post delivery transfers. This right has already been granted to the CDQ sector, and the Council has begun a process, which should result in it being made available to the IFQ sector. This will almost certainly eliminate deadloss and overage accounting problems.
2. A more timely and efficient NMFS/RAM transfer process. This is a significant problem for both sectors, for both pre-season matching and in-season operations. Combined with post-delivery transfer rights (see above); almost all of the problems expressed by harvesters would be eliminated. Nonetheless.
3. The absence of a true harvester inter-cooperative exchange organization is a significant problem. This may be a symptom of how young the program still is, or it may be the result of the “pass through cooperative” system most harvesters have opted for before (see discussion below).
4. The almost universal absence of “reserve pools” within harvest cooperatives. Under a reserve pool system, the Cooperative members agree pre-season to set aside a certain amount of collective quota, which members can then draw upon to meet their overage, deadloss or other delivery-related problems; reimbursing members for use of the quota. We believe that this could also be a symptom of the “pass through cooperatives” which have sprung up under this program.

Under the crab rationalization program, once a harvester joins a cooperative s/he is afforded two significant benefits; (a) elimination of vessel use caps and (b) access to the binding arbitration process. In exchange, it was expected that coop members would in fact operate collectively to "... enhance efficiency ... because partners (will) look beyond simple self-interest to the synergistic benefits of mutual interests.<sup>8</sup>" That is why the annual allocation of IFQ associated with a particular harvester is then issued directly to the cooperative.

The harvest sector was granted a valuable economic asset and cooperative operation benefits, and both the State of Alaska and the NPFMC expected that those cooperatives would respond by "... the sharing of real time harvest data, collective bycatch monitoring and internal enforcement and quality controls.<sup>9</sup>" Yet there is very little evidence that this level of cooperation yet exists in the harvest sector. *Also see Footnote 3, above.*

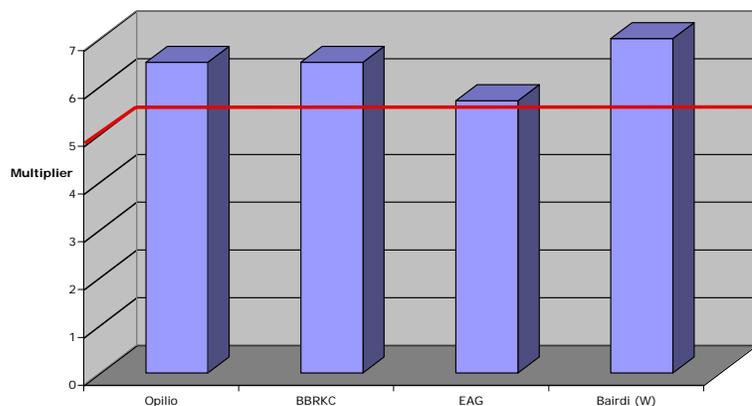
The lack of intra-cooperative and inter-cooperative structures may be evidence of a program still in its infancy, or it may be evidence that more significant structural issues have emerged. Almost every major unaffiliated crab harvest cooperative has structured itself as a "pass through cooperative" to capture the benefits of the program will while still allowing individual members a high degree of operational independence. Under a pass through cooperative, the IFQ issued to the cooperative is then reallocated internally back to the vessel owner/member, reducing the incentive to establish long-term cooperative mechanisms like reserve pools and inter-cooperative exchanges.

This problem is likely exacerbated by the fact that a harvester can move from one cooperative to another cooperative each new "crab" year, thus potentially compounding the short-term nature of the relationships.

Is the absence of a formal inter-cooperative exchange and intra-cooperative reserve pools a sign of program immaturity or a deeper structural/regulatory problem?

Whichever conclusion one is drawn to, it leaves little doubt that current "unintended use" of B shares is primarily a result of these organization problems, not the A share/B share split.

**Current Crab IFQ Values**  
Sales (Asset) Value Expressed as Ex-Vessel Multiplier  
Halibut IFQ Values Shown in Red



<sup>8</sup> State of Alaska, Commissioner Kevin Duffy, June 8, 2002 statement to NPFMC record.

<sup>9</sup> State of Alaska, "Issue Papers for the BSAI Crab Rationalization Program adopted by the NPFMC", June 2002

Has there been significant economic harm to harvesters?

We have shown that there is a fairly insignificant use of B shares for delivery-related problems like deadloss, overages, or response to other events; and to the extent that there has been, it has been as a result of unilateral decisions by the vessel owner/operator. The decision may have involved some real “cost”; but it is likely that the “cost” was a result of a lack of efficient transfer mechanisms; not the underlying A share/B share split.

But has the cost been in any way significant? Based on the market evidence available at this time, the answer is clearly “no”.

To substantiate this we need only look at two publicly available sets of data:

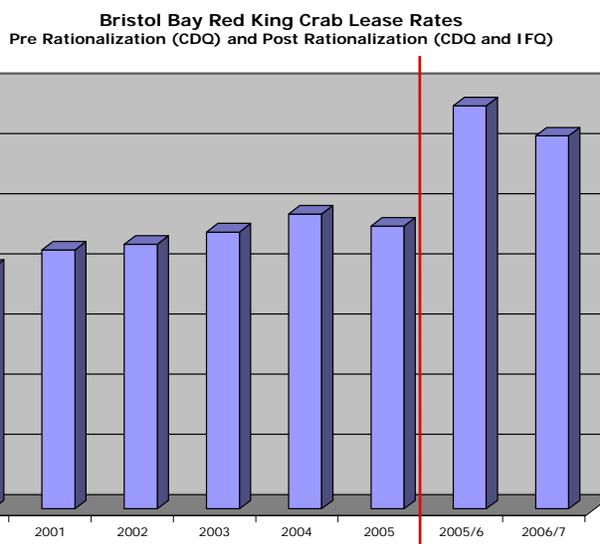
1. The current resale price for crab IFQ, as compared to the resale prices for halibut IFQ (a pure IFQ fishery without regionalization of processor quota).
2. Current lease rates, compared to their (recent) historic averages.

*Crab IFQ resale values*

One would assume, based on all of the noise surrounding the crab program, that crab IFQ market values would be below the market value of halibut IFQ; given that the halibut fishery is a well-established “pure IFQ” fishery that has proven itself successful in bringing additional value to the resource, consumers and participants ... goals for the crab program that will take time to achieve.

Yet crab IFQ is currently trading for higher multiples than halibut IFQ. In fact, nearly 130% greater than halibut IFQ values, expressed as an ex-vessel multiplier (the traditional method that the market sets values).

Some individuals have expressed the opinion that halibut IFQ values have previously traded nearer to the current crab IFQ values, but bear in mind that the halibut fishery is a pure-IFQ fishery, with well-established and stable markets ... yet crab IFQ is still trading at or above the levels of halibut IFQ.



A second indicator that the crab harvest sector is doing very well is the current IFQ lease rates. For Bristol Bay Red King Crab the current rates are running between 65% and 70%. This is a huge return to IFQ holders, with little or no consequential risk.

Again, it is worth making a comparison ... in this case, CDQ royalty rates for the five years leading up to implementation of the program.

Because of the Opilio crab collapse of 1999 and low GHL's throughout the crab industry during this period, CDQ royalty rates (a pure IFQ rate with no delivery restrictions or matching requirements) jumped from about 35% in the late 1990's to the 40% - 50% range in the early 2000's; rates considered very high at the time. Yet under the new crab program, IFQ lease rates (the equivalent of CDQ royalty rates) have jumped an additional than 20 percentage points to an astounding 65% - 70% range.

## **DRAFT On-line Transfer Procedures for Inter-cooperative IFQ Transfers**

July 29, 2007

This document was developed by staff of the NOAA Fisheries Service, Restricted Access Management (RAM) Program. It is intended to provide a preliminary outline of RAM procedures for online inter-cooperative transfers, if implemented. Incorporated by reference: Document titled "Online Quota Transfers-final 5-25-07-1.doc" (Online Transfers) presented to the North Pacific Fishery management Council (Council) in April 2007.

As discussed in Online Transfers, inter-cooperative transfers of individual fishing quota (IFQ) for crab cooperatives represent an excellent business case for online transfers.

### **Requirements for implementation of an on-line transfer process:**

- a NOAA Fisheries Service policy decision to move forward;
- assigning a priority status for this implementation;
- regulatory development by Sustainable Fisheries (SF) to authorize online transfers and to amend required information collections;
- development of new electronic methods of checking for delinquent, non-tax debts with the Department of the Treasury TOPS system;
- development of new methods to charge fees for processing applications for permits and associated transactions;
- policy decisions: substitution for notary; and
- IT development: database changes, programming, design, testing, documentation.

### **Primary regulatory changes required at 50 CFR § 680.41 and § 680.21:**

- 1) Authorize electronic submittal.
- 2) PRA information collection changes
  - i) Reduce information required (pre-fill e-form or use pick list).
  - ii) Revise/simplify price information required.
  - iii) Replace signature, notary with e-equivalent.
  - iv) Require attachments after-the-fact or delete (contract, representative authority)
- 3) Change requirement for NMFS to notify applicants by mail on disapproval.

**Status of the proposal:** RAM has presented the project to SF and GC staff, and discussed technical issues among the IT staff and with permits contacts in other regions. RAM staff is conducting some preliminary database work preparatory to implementing online transfers, and can be available to work with SF regulatory specialists, pending the assignment within SF. RAM and SF IT staff has developed a draft process as follows:

**Draft online process for online inter-cooperative transfers:** “Transferor” means IFQ donor and “Transferee” means recipient:

- 1) **Passwords.** Each cooperative’s Representative of record would be issued a “transfer key,” a self-maintained password that would allow a User (person possessing the key) to conduct any transfers on behalf of the cooperative.
- 2) **System Access.** A User logs in with the cooperative’s NMFS ID and transfer key to a Crab Program section of a secure web site and selects “New” or “Pending” Transfers.
- 3) **Initiating Transfers.** Transferor User initiates all new transfers:
  - i) Selects receiving cooperative from list.
  - ii) Selects donor permit and fishery from list.
  - iii) Enters transfer data.
  - iv) Reviews data; (can amend data until submitted).
  - v) Submits data (can withdraw the transfer until Transferee submits).
    - (a) Transaction is assigned a system identifier.
    - (b) Transaction status = “Pending”.
    - (c) RAM system automatically checks approveability of transfer, including:
      1. Receiver eligibility (general - sanctions)
      2. Transferor pounds available
      3. EDRs owed (either party)
      4. Non-tax debts owed (either party)
    - (d) Online and email messages indicate transfer status.
    - (e) Transfer remains valid for X hours/days, then is “abandoned”.
  - vi) Transferor selects additional permits and repeats steps as needed.
- 4) **Completing Transfers.** Transferee User logs in, selects “Pending transfers”
  - i) Selects transfer from list.
  - ii) Enters transfer data, selects members for receiving pounds from list.
  - iii) Reviews data; (can amend data until submitted).
  - iv) Submits data (can withdraw the transfer until submitted)
  - v) Submits application fee, if any, via Pay.gov.
    - (a) RAM system checks approveability of transfer, including:
      1. Member caps
      2. GC sanctions
      3. EDR submittals
      4. Payment verification via Treasury’s Pay.gov.
      5. Treasury (TOPS) checks for debts, both parties.
    - (b) email show status, including approval/non-approval
  - vi) Approved transfers: online status = “Approved/Confirmed;” email sent
  - vii) Status is viewable; confirmation and revised permits printable online.
- 5) **Final Administrative Steps.** RAM staff prints off confirmation for files and mailing.

**Proposed online transfer statuses:**

*Pending:* in progress

*Withdrawn:* voluntarily withdrawn by either party before Transferee submits.

*Not Approveable:* parties are instructed to contact RAM.

*Complete:* Transfer occurred, confirmations sent/available for view.

*Abandoned:* Transfer void; not completed within allowed time period.

**Notes:**

1. Most actions and status changes trigger emails to both parties, if email address is on file with RAM. NOAA can send, but cannot guarantee receipt of, emails.
2. Any application fees would be paid online via Pay.gov, Treasury's secure site. RAM does not collect or store credit card information.
3. Transfers for each fishery, sector, region, and ROFR combination would be separate transactions, as in the current situation.
4. Transferee User can view member's cap status.
5. Pounds remain available for landings or other transfers until transfer is approved/confirmed.
6. All submitted data and record of emails are saved for documentation, even if transaction is not completed.
7. NOAA Fisheries is not responsible for, nor will assist in, private funds collection.
8. Applicants cannot change addresses or contact information online, but can provide a temporary address for mailing of documents resulting from this transfer.
9. IFQ permit holders, including cooperatives, will be able to access transfer reports of their own transactions (Date, To/From/IFQ type/IFQ amount).

**Preliminary questions/issues:**

1. How long to leave a transfer in the system before it is archived as "abandoned"?
2. How to handle required attachments. Delete or require within X days?
3. Require email for online transfers?
4. What information to display at menus?
5. Regulatory changes, including simplifying socio-economic and price data.
6. Nature of a "signing ceremony"?
7. What notifications/documents must be mailed (snail mail)?
8. What additional reports or information would be helpful to support transfers?

jgharrett: 7/28/07

Online\_transfers\_process.doc

## **Transfer issues for discussion with RAM Crab advisory committee July 2007**

### Consolidation of transfer authority in an agent

Use a third party agent to administer all transfers to reduce the number of documents and individuals that RAM must deal with. This might be similar to what Rickey and Associates have been doing for thirty years.

RAM response – this is currently permitted by authorizing third parties to engage in transfers.

### Electronic transfer capability

Use a signed, notarized document on file with RAM authorizing a person to use a RAM issued PIN to engage in transactions. The use of the PIN would insulate RAM from liability for mistakes.

RAM response – this is currently being developed, but will require regulatory amendment.

IFQ and IPQ transfers – For pre-issuance transfers, include a system for the automatic transfer of IFQ/IPQ on issuance of annual IFQ/IPQ. Administering these changes prior to IFQ/IPQ issuance is critical to the share matching and arbitration process. Administering these transfers after issuance leads to confusion in both sectors and contributes to disputes by involving multiple participants from a sector in a transaction that should only involve the recipient of the transferred shares.

RAM response – the agency will need to consider whether pre-issuance transfers are permissible – the issue will need to be developed with input from NOAA GC. Relaxing the share matching and arbitration deadlines may relieve some of the time pressures arising from pre-issuance transfers. Electronic transfer systems may alleviate any burden that pre-issuance transfers are intended to address.

### Real time transfers

All transfers should be real time. A system of electronic transfers would allow transfers 24/7.

RAM response – this is currently being developed, but will require regulatory amendment.

### Fax transfer applications

Allow any paperwork to be submitted by fax

RAM response – currently permitted for inter-cooperative transfers, provided document is fully legible (including notary stamps); for long term change regulatory change will be required

### A share landing requirement exemption

In circumstances beyond the harvester's control (processor break down, ice, extended delivery dates), exempt A shares from delivery requirements allowing the delivery of catch under B share terms. Applies only to product already onboard.

RAM response – this is inconsistent with the rationalization program and would require Council action.

### Update on RAM position on post-delivery transfers

Post delivery transfers of overages or underages.

RAM response – the Council is currently addressing this issue.

Industry panel for agency interaction when developing new transfer processes

Use an industry panel made up of persons that frequently process transfers during the design phase as a sounding board for practical application of the tools.

RAM response – RAM intends to solicit input and coordinate with industry in the development of new transfer processes

Industry test group

A test group comprised of specifically selected industry members that frequently process transfers to provide an in tandem procedure for de-bugging the program could ensure that the system is fully functional when implemented.

RAM response – RAM intends to solicit input and test systems with industry assistance.

Fully monitored transfer station

The transfer station at RAM should be monitored at all times to avoid delays in transfers. Currently, messages may not be returned for one or two days. At a minimum, one person should be available to handle requests and calls. A system of ‘out of office’ emails and voice mail messages could be used to notify persons of on duty persons for handling transfer requests.

RAM response – the RAM 800 number currently monitored at all times during normal business hours. Some delay may arise from callers asking for a specific person, rather than submitting their questions to persons answering the line.

Single person signoff on transfers

Can a system in which one expert signs off on transfers, rather than two. A random audit process could be used to test the work.

RAM response – the current two person review is required for verification purposes. Electronic transfers may alleviate some of the time burden arising from this review process.

Revisions to the transfer form

Revisions to the transfer form could simplify the form.

RAM response – specific suggested changes in the forms are welcome and will be considered.