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Crab Advisory Committee As of October 2, 2007 Report to the Council

The committee would like to recognize the contributions of Chris Heuker who is recently deceased. Chris was a giant of a man whose leadership as the manager of the Bering Sea Crab Cooperative and as a Director of the Bering Sea Arbitration Organization are greatly missed.

Regulatory Recommendations

Market reports and non-binding formulas for fisheries unlikely to open

Under the current regulations, market reports and non-binding formulas are required to be generated annually for each fishery regardless of whether the fishery opens. In the first two years of the program, the St. Matthew Island and Pribilof fisheries have not opened. During this period, the arbitration organizations did not contract for the production of market reports or non-binding formulas for these fisheries. A modification of the regulations could be developed to remove the requirement for producing a market report for fisheries unlikely to open.

The committee reached a consensus that the arbitration organizations could adequately address this issue by agreement. Industry and the organizations have adequate information to assess the potential for fisheries to be closed prior to the season. A modification of the current regulation could be considered to exempt any fishery from the market report and non-binding formula requirements provided the arbitration organizations agree that the fishery is unlikely to open. In the event that ADF&G later announced that the fishery would be opened, the arbitration organizations would be required to obtain the report and formula. The amendment could also require that the arbitration organizations' agreement include a contingency plan for obtaining the report and formula, in the event that a fishery opening was announced.

Possible amendment (alternative to the status quo)

In the event that the arbitration organizations representing at least 50 percent of the PQS holders and at least 50 percent of the unaffiliated QS holders agree that a fishery is unlikely to open, neither a market report nor non-binding formula will be required for the fishery. Any such agreement will include provision for the production of the market report and non-binding formula, in the event that an opening is later announced for a fishery, specifying a timeline for the production of those reports.

Draft purpose and need statement

Under the current regulations, market reports and non-binding formulas are required to be generated annually for each fishery regardless of whether the fishery is likely to or does open. This requirement adds to the cost of arbitration by needlessly requiring participants to contract for the production of these documents. An amendment that allows participants to avoid this requirement when a fishery is unlikely to open could save on costs of the arbitration system. The amendment should include provision for the preparation of the market report, in the event the fishery should open.

Timeline for the golden king crab market report and formula does not allow for data from most recent fishery to be used

Under the current regulation, data from the most recent season are not available for use in developing the market report and non-binding formula because those reports are required to be completed 50 days prior to the August 15th fishery opening. Allowing an additional 20 days for the completion of the report and formula would allow the use of data from the most recent fisheries. The committee reached a consensus that the current rule be modified to require the reports 30 days prior to the fishery opening.

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Possible amendment (alternative to the status quo)

The market report and non-binding price formula for the golden king crab fisheries will be required to be completed at least 30 days prior to the opening of those fisheries.

Draft purpose and need statement

Under the current regulation, the market report and non-binding formula for the Aleutian Islands golden king crab fisheries are required to be completed 50 days prior to the August 15th fishery opening. Under this timeline, data from the most recent season are not available for use in development of those reports. The inability to use data from the most recent season could diminish the accuracy and quality of these reports. Postponing the due date of these reports to a later time in the preseason could allow for more complete and accurate reports that provide timely information to market participants.

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 (alternative to the status quo)

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.

Draft purpose and need statement

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. More timely and relevant market information to be used for price negotiations might be provided to participants in the fisheries, if those participants are permitted to negotiate agreeable terms (including due dates) for the provision of a market report and supplements to suit their needs.

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

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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.

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.

Immunity for arbitration organizations, arbitrators, market analysts, and the third party data provider

Staff reported that the Council has requested NOAA GC examine the potential development of provision of immunity for arbitration organizations, arbitrators, market analysts, and the third party data provider. Any such immunity would not apply to breaches of contract, acts of malfeasance, or similar intentional misdeeds. The committee generally expressed its support of this grant of immunity.

Possible amendment (alternative to status quo)

Arbitration organizations, arbitrators, market analysts, and the third party data provider should be granted immunity from lawsuits related to their acts in their respective capacities as arbitration organizations, arbitrators, market analysts, and the third party data provider. Any such immunity would not apply to breaches of contract, acts of malfeasance, or similar intentional misdeeds.

Draft purpose and need statement

To enable arbitration organizations, arbitrators, market analysts, and the third party data provider to provide their services with independence and free from bias could require that those parties be free from the threat of potential claims related to their performance of those services. A grant of immunity for acts taken in performance of their duties may provide this degree of protection.

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

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for fisheries, other than the brown king crab fisheries, initiation of arbitration prior to the end of the crab fishing year on June 30th would be timely, provided the proceeding is finalized by July 31st. 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 15th) the committee agreed that proceedings should be initiated by May 31st and completed by June 30th, to ensure that the outcome would be available to the formula arbitrator for the following season.

Possible amendment

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

Additional Discussions

The committee discussed several issues related to the program beyond the regulatory issues addressed above. This section of the report summarizes those discussions.

Share transfers

Several committee members expressed concerns over the processing time for transfers. The committee also recognizes that part of their frustration with transfers could arise from a failure to adequately communicate to RAM their concerns and interests. To address this shortcoming, the committee developed a list of issues and interests that it shared and discussed with RAM representatives, who attended a meeting. A summary of the issues and RAM responses is attached to this report.

The committee expresses its gratitude to the staff of RAM for working to develop an expedited process for transfer applications. The committee believes that real time transfer processing is important to addressing logistical issues that contribute to unintended uses of B shares and that RAMs efforts to expedite share processing will make important contributions to addressing those issues.

Accessing first wholesale information during arbitration

The committee discussed harvesters' need for first wholesale price information from processors to allow for effective participation in the arbitration system and implementation of the arbitration standard. The committee generally agreed that the issue might be best addressed either through the arbitration organizations or through informal arrangements by industry, rather than through the Council process. If industry and the arbitration organizations are unsuccessful in reaching a resolution of this issue, the public and committee could develop proposals for minimum data requirements for committee consideration. The committee agreed that it should allow time for industry and arbitration organization discussion of this issue prior to including it on its agenda. If industry is not capable of addressing the issue, it could be revisited by the committee at a future meeting.

The potential replacement of COAR data in arbitration

The committee also discussed the potential for improving data for defining the historic division of revenues in the arbitration system. 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, including the inability to isolate data from a single fishery or region. 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

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concern that the variety of product forms and recovery rates could complicate generation of historic first wholesale prices. In concluding these discussions, the committee agreed that the selection of data for use in arbitration is beyond its current purpose.

Use of B shares

The committee spent substantial time discussing the current uses of B shares and the extent to which B shares are being used for the purposes intended by the Council. The starting point for these discussions was the three possible uses of B shares that may have been intended by the Council: providing competitive negotiated deliveries, serving unserved or underserved markets, and to facilitating processor entry.

The committee discussed several possible purposes for B share use and methods for minimizing uses for unintended purposes. Committee members generally agreed that B shares are not excessively used to cover deadloss and that deadloss is not preventing B shares from being used for their intended purpose.

Much of the committee discussion centered around the use of B shares to address logistical contingencies that arise because of the IPQ and regional landing requirements applicable to A shares. Several committee members cited the fire that temporarily disabled the Steller Sea and ice conditions in the North region as examples of such contingencies. Some committee members believe that unpredictable logistical complexities such as these require them to reserve B shares against contingencies, preventing their use for their intended purposes. Other committee members suggested that the flexibility of being able to fish shares at any time and move shares among cooperative vessels has allowed cooperatives to address most of these logistical challenges internally. 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.

The committee also discussed the need for a more streamline system of transfers and a system of post-delivery transfers to alleviate logistical pressures that consume B shares. The committee discussed the potential for an inter-cooperative to address logistical complications. Several committee members expressed concern that use of an inter-cooperative could be complicated, since the current system does not accommodate the inclusion of affiliated harvesters in a cooperative that includes unaffiliated harvesters. The committee also raised the issue of whether an inter-cooperative developed through new regulations would differ under an inter-cooperative under the existing regulations.

The committee also discussed the potential for trading of processor shares to address logistical complications. Many committee members acknowledged that these trades could be limited by antitrust concerns. In addition, one committee member suggested that the benefits of these transactions could be limited, if they result in a processor having products packaged in another processors packaging and produced to that other processor's specifications.

One committee member suggested that relief from regionalization could limit the extent that B shares are needed to address logistical complications. Another committee member suggested that any 'emergency' relief from regional landing requirements would need to have clear, easily administrable criteria to allow for implementation and enforcement. Another committee member suggested that community consent should be necessary for any emergency waiver of a regional landing requirement to ensure that communities do not bear the costs of the emergency. The committee agreed that this discussion is beyond the scope of the committee's current direction from the Council. The committee suggested that members of communities should be included in any further discussion of this issue. The committee agreed that

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discussions of potential relief from regional delivery requirements be delayed until after the October Council meeting and further direction from the Council.

One committee member also suggested that some B shares are used to increase operational efficiency. For example, B shares may be used to enable a vessel to make a full trip (rather than catch only a portion of a boat's capacity). Some committee members suggested that these decisions could prevent B shares from serving their intended purposes, but observed that the decision was in the control of the harvester and that the efficiency benefits accrue to the harvester. 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). Harvesters also suggested that B shares are currently used to cover overages on A share deliveries. These members suggested that the benefit from covering an A share overage with B shares exceeds the potential benefit of underharvesting (and underdelivering) an A share commitment to an IPQ holder. Some harvesters suggested that the current small quotas prevent use of B shares for anything but topping off loads of A share deliveries.

Some harvesters expressed concern that small niche markets and smaller processors may be difficult to serve under any system because efficiency benefits of delivering a full load are too great to overlook. Delivering to multiple processors increases deadloss and reduces quality for the processor taking the second delivery from the bottom of the tank. 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.

Some committee members pointed out that, to some degree, B shares have served all of the intended purposes. Some harvesters have had the opportunity to market B shares based strictly on price. Committee members also described the entry of a few small processors to the fishery, who have taken deliveries of B shares. Some of these deliveries were made by cooperatives that pooled B shares to make deliveries to these smaller markets. Some of these deliveries were made to Kodiak in both the Bristol Bay red king crab and *C. opilio* fisheries. One committee member also mentioned the production and sale of a small amount of live Bristol Bay red king crab from B share landings as evidence of a new product form. These all demonstrate that at least a portion of the B share pool has served its intended purpose.

Some committee members suggested that some of the difficulty in addressing the B share issue is caused by the relative lack of experience under the program (2 years). Year-to-year changes in the fisheries contributed to a variety of factors that influence harvesters' ability to use B shares to pursue the best markets. These committee members suggested that participants will learn more with each year and that continued discussion of B share issues could be fruitful in resolving issues as they are identified.

Future action of the committee

Committee members generally agree that the advisory committee is an effective means of addressing technical issues that have arisen under the crab program. The committee has generally believes that it should continue to meet to address existing and new problems under the program. Specifically, the committee believes that a better understanding of the issues surrounding the use of B shares can be attained by further committee discussion. To aid with these discussions, the committee would like to request additional information from staff, including some data analysis concerning the spatial and temporal distribution of B share landings, as well as the relationship of those landings to A share landings.

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Several committee members also expressed an interest in continuing the discussion of the potential need for relief from regionalization to address contingencies (such as icing), but acknowledged that community representation is important for the discussion of this issue. Community representation on the committee could also (more broadly) contribute to discussion of the use of B shares to address inseason contingencies and the effects of the program's regionalization component on the use of B shares. The committee acknowledged that all communities with active industry members could have an interest in these issues. Some members suggested that non-IPQ holding processors might have useful inputs into the discussion. While representation of additional constituencies could be beneficial to the committee, the committee recommends that care be taken to maintain a small enough size to ensure that the committee can operate effectively. In addition, some committee members suggested that the committee could remain effective, if members representing new constituencies limited their participation to aspects of the program that affect their constituencies. For example, price formation and the program's arbitration component should not be of concern to communities, so community involvement in the discussion of those issues might not be necessary. To date, the committee put no limit on public participation in its meetings. Members of the public are permitted on request. The committee would like to maintain a size and composition that allows it to continue this practice.

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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.

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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.