

C-3(a)-(c)
Bering Sea Aleutian Islands Crab rationalization program
North Pacific Fishery Management Council
June 6-7, 2009

C-3(a) – Emergency exemption from regional landing requirements

The Council takes no action at this time, but strongly urges the parties (communities, harvesters, and processors) to exercise their collective best efforts to arrive at a consensus recommendation for a preliminary preferred alternative prior to the October Council meeting.

C-3(b)(1) Right of first refusal (ROFR)

The Council adopts the purpose and need statement and alternatives below for initial review to enhance the community/processor right of first refusal (ROFR) agreements.

Purpose and Need Statement:

The Bering Sea/Aleutian Islands crab rationalization program recognizes the unique relationship between specific crab-dependent communities and their shore-based processors, and has addressed that codependence by establishing community “right of first refusal” agreements as a significant feature of the program. These ROFR agreements apply to the Processor Quota Shares (PQS) initially issued within each community, and are entered into and held by Eligible Crab Community Organizations (ECCOs) on behalf of each respective community.

To date, there have been several significant Processor Quota Share transactions, resulting in ECCOs now owning between 20 percent and 50 percent of the PQS in each rationalized fishery. However, the ability of the ROFR to lapse may diminish the intent to protect community interests. Also, limiting the time period to exercise the right may conflict with the ability to exercise and perform under the right of first refusal. In addition, some communities, when exercising the ROFR may have no interest in purchasing assets located in another community and feel the ROFR contract should exclude any such requirement.

Alternative 1: Status quo, no action.

(Alternatives 2, 3, and 4 can be combined)

Alternative 2: Increase community protections by removing the ROFR lapse provisions.

- 1) Require parties to rights of first refusal contracts to remove the provision that rights lapses, if the IPQ are used outside the community for a period of three consecutive years
- 2) Require parties to right of first refusal contracts to remove any provision for the right to lapse if an entity chooses not to exercise its right
- 3) Require that any person holding PQS that meet landing thresholds qualifying a community entity for a right of first refusal to maintain a contract providing that right at all times

Alternative 3: Increase an ECCOs timeframe for acceptance and execution of a ROFR.

- 1) Require parties to rights of first refusal contracts to extend the period for exercising the right of first refusal from 60 days from receipt of the contract to 90 days from receipt of the contract.
- 2) Require parties to rights of first refusal contracts to extend the period for performing under the contract after exercising the right from 120 days from receipt of the contract to 150 days from receipt of the contract.

Alternative 4: Apply the ROFR to only PQS and assets in the ECCO's community.

- 1) Require parties to rights of first refusal contracts to provide that the right shall apply only to the PQS and other assets physically present in the community benefiting from the right of first refusal. In the event other assets are included in the proposed sale, the price of the PQS to which the price applies shall be determined by:
 - a) an appraiser jointly selected by the PQS holder and the entity holding the right of first refusal.

In addition, the Council shall write a letter to the Secretary of Commerce supporting the creation of a loan program.

C-3(b) (2) Western Aleutian Islands golden king crab regionalization and PQ issues

The Council requests harvesters, processors, and communities to work together to develop proposals for an exemption from regionalization in the event processing capacity is unavailable, as described in the discussion paper. Proposals are due back by October 2009.

C-3(b) (3) Extinguishing crab PQ

No action.

C-3(b) (4) Leasing restrictions

No action.

C-3(c) - 5 year review of the program

The Council requests staff to bring back a proposed outline of the 5 year review to further discussion of scoping that review.