

BERING SEA/ALEUTIAN ISLAND CRAB RATIONALIZATION PLAN

HEARING BEFORE THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

MAY 20, 2003

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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BERING SEA/ALEUTIAN ISLAND CRAB RATIONALIZATION PLAN

TUESDAY, MAY 20, 2003

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:45 p.m. in room SR-253, Russell Senate Office Building, Hon. Ted Stevens, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Congress directed the North Pacific Fisheries Management Council, in the Consolidated Appropriations Act for 2001, to examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries. The Council was directed to analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. In doing this, the Council was expected to include economic analysis of the impact of all options on the three components of the fishing industry communities, processors, and fishing fees.

In 2002, the Council voted unanimously to create a three-pie system of quota share for the harvesting sector, the processing sector, and communities. 100 percent of the catch is allocated to the harvesters and 90 percent to the processors, with 10 percent open access. The rationalization concept of processor quota share is a novel idea that has its roots in the American Fisheries Act, AFA.

I worked closely with the Senators from Washington to develop the AFA, a fisheries rationalization plan, for the Bering Sea, Aleutian Islands pollock. AFA has proved to be a good rationalization plan that has allowed for increased use of target species, better execution of the fishery, instead of a race for the fish, and a great success in conservation and management of the fishery, and this has brought about substantial growth in pollock stocks. The BSAI Crab Rationalization Plan must benefit all Alaskan communities. This fishery is prosecuted entirely off the coast of Alaska, and the various communities that have a history under the Council's plan must have a role in the future of this fishery.

I am encouraged to learn that the Council has completed work on the trailing amendments and has provided additional protections for the communities' impact by rationalization of this fishery.

And I thank the witnesses for coming to Washington for this hearing, and I look forward to your testimony. Again, my apology for being slightly late.

Senator Murray, we are pleased to have your statement.

**STATEMENT OF HON. PATTY MURRAY,
U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. Well, thank you very much, Mr. Chairman, for holding this hearing today. I really appreciate your leadership and for inviting me to testify today on the North Pacific Crab Rationalization Plan.

The states of Alaska and Washington share many common interests, and I appreciate the opportunity to work with you as we address these important regional issues. The commercial fishing industry is one example of the many interests that are shared by the states we represent. On the issue of crab rationalization which is before us now, I am confident that we will be able to work together, as we have in the past, to tackle this important subject.

Mr. Chairman, you and I are both here today for one simple reason, the status quo is not working. The status quo means more lives lost at sea, inefficient use of the resource, and harm to fisheries. We know that overcapitalization plaguing the industry was caused, in part, by the race for fish and short fishing seasons, and we know that we can more efficiently manage our resource.

Mr. Chairman, the race for fish puts our fisherman at an unacceptably high risk. Too often, we hear of boats that risk too rough a sea and never return home. We know from past efforts that rationalization slows down the fishery and brings tremendous environmental and safety benefits. Participants avoid going to sea during bad weather, take time to treat the resource carefully, and minimize waste. We do know, also, that there is risk and uncertainty associated with employing new public-policy tools, and, in many cases, we cannot know the full impact of new approaches until we try them. I believe, however, that the experience of the American Fisheries Act is a testament to the potential benefits of crab rationalization.

The plan recommended by the Council may not be perfect, but it does represent significant progress over the status quo. The costs of continued delay, in lives and in resources, are high.

There are, of course, different perspectives on the crab plan passed by the Council last June. Many of my constituents are concerned about the plan because of its inclusion of processor quotas and impacts for the industry and communities. Most of the anxiety expressed by harvesters and communities is focused on the proposed plan's guarantee of 90 percent processor quotas.

Mr. Chairman, I appreciate these concerns, and I am interested in exploring ways we might address them. We cannot let the perfect become the enemy of the good. After years of deliberation, the Council recommended its plan by a vote of eleven to zero. I believe it was the intent of the Council to send a strong message on this subject, and it did. Congress cannot ignore this significant action.

Today, we will hear about the many benefits that can come from rationalizing the crab fisheries. We will be urged to enact legislation authorizing processor quotas so the Council and the National Marine Fisheries Service can begin the arduous work of implementing the plan.

I look forward to hearing from the witnesses today, in hopes of hearing perspectives that will bring us new insights about how we should proceed. After today's hearing, it is important that Members of this Committee and Congress make crab rationalization a priority this Congress so we can complete the transition away from the status quo.

Mr. Chairman, I look forward to today's testimony and to working with you on this issue in the weeks and months ahead. And thank you, again, for allowing me to participate in this important hearing.

Senator STEVENS. Senator, I would be pleased if you would join me here. I do expect another Senator, or more, could join before we are through.

I should say to the audience—I know that most of you are from home, or at least from the Pacific Northwest—and this is one of those busy days in Washington, from the Senate. We have the Armed Services bill on the floor, and we have several competing conferences and hearings going on today. So I do not expect we are going to have any other Senators join us, except Senator Murkowski, if she gets cleared from her current hearing.

We have, now, a panel which is made up of Mr. Kevin Duffy, Commissioner of the Alaska Department of Fish and Game; Ms. Linda Freed, City Manager of the City of Kodiak; Mr. Dave Fraser, Captain of the fishing vessel Muir Milach; Mr. Frank Kelty, Natural Resources Manager of the City of Unalaska; and Mr. Arni Thomson, Executive Director of the Alaska Crab Coalition, from Seattle. I failed to note that Mr. Fraser is from Port Townsend, Washington.

I would appreciate it if you would come to the Council table, and we will go through the hearing.

As you are coming up, many have questioned the time involved in this hearing. I am not the Chairman of this Subcommittee. The Chairman of this Subcommittee is otherwise involved in other things and did not have time for this hearing. He consented that we could have the hearing, but we are limited, in terms of the time, because of the circumstances I mentioned before, in terms of the bills that are before the Senate. We may have votes during the time of this hearing, in which we would have to stand in recess so that we could go cast our votes and return. Senator, do you have an opening statement?

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Mr. Chairman, thank you for the opportunity to participate, to be here with so many Alaskans this afternoon.

If I had to characterize my views on the proposed Bering Sea Crab Rationalization Program at the moment, I would probably say it is undecided. So I look forward to hearing from today's witnesses, who represent a range of views, and who will, I hope, help Congress make informed decisions on this.

The last decade has been marked by rapid change. Resource levels, market conditions, and economic performance have all fluctuated wildly. And it is clear that a race for fish is no longer the

optimum strategy for management, if it ever was. It leads to adverse consequences for the resource, for the market, and for the fishermen who risk their lives to pursue it. So change is needed, but how much and what kind?

Mr. Chairman, I do have a rather lengthy opening statement, but would like, more specifically, to hear from those who have come to speak on this issue. I would be happy to include the balance of my testimony for the record so that we can provide the opportunity to hear from the panel this afternoon.

Senator STEVENS. Well, thank you very much, Senator. All of the statements that are filed by the witnesses and by yourself and the statement made by Senator Murray will be printed in full in the record as though completely read, and we appreciate your courtesy of postponing the further testimony so that we may turn to the witnesses now.

[The prepared statement of Senator Murkowski follows:]

PREPARED STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Mr. Chairman, thank you for the opportunity to participate in this important hearing.

If I had to characterize my views on the proposed Bering Sea crab rationalization program at this moment, the appropriate word would be "undecided."

I look forward to hearing from today's witnesses, who represent a range of views, and who will, I hope, help Congress make informed decisions.

The last decade has been marked by rapid change. Resource levels, market conditions and economic performance all have fluctuated widely.

It is clear that a "race for fish" is no longer the optimum strategy for management, if it ever was. It leads to adverse consequences for the resource, for the market, and for the fishermen who risk their lives to pursue it.

Change is needed. But how much? And what kind?

I see very substantial support for moving to Individual Fish Quotas (IFQs) for crab harvesters. This alone is a radical change from the open fisheries of the past, but IFQs have been shown to be beneficial in other fisheries. They have slowed the race, improved product quality, allowed more profitable operations, and improved safety.

But there have also been unintended consequences. When IFQs were implemented in Alaska's halibut and sablefish industries, some processors claimed they were harmed because their considerable capital investments—necessary to compete in an open-access race for fish—were no longer needed. I have no reason to doubt those losses. But neither have I seen convincing analysis to demonstrate that the same impact would necessarily occur in other fisheries.

The most controversial aspect of the proposed plan is that it incorporates both IFQ's and Processor Quotas (PQs). Where IFQ's allocate the right to compete for fish, PQs allocate the fish themselves, after they have become private property of the fishermen. One effectively provides a license to compete, while the other effectively provides protection against competition. That is an important distinction, and one which Congress must take very seriously. Protection against competition is not a traditional role of the government in a free marketplace, except where dealing with a limited resource owned by the government, such as radio-frequency bandwidth. Congress must now decide if it is a necessary step—or if it will ultimately lead to more serious problems.

There is very little history to draw upon for guidance, at least in the fishing world. Some point to the remarkably successful restructuring of the Alaska Pollock fishery under the American Fisheries Act (AFA), which also created a closed class of processors. However, it is important to note that the AFA, crafted by Senator Stevens and Senator Gorton with extensive input from involved fishermen and processors, functions quite differently in the way it deals with the processing issue. It requires that processors work with fishermen's co-ops, and it offers no guarantees beyond the annual co-op agreements.

As an Alaskan representing my State in Congress, my primary concern is the potential impact on my constituents and their communities. There is strong support for the plan among many of the communities that have traditionally processed the bulk of the Bering Sea crab catch. That is understandable. Most of those commu-

nities would, like the processors themselves, be protected by a program that mandates that harvested crab be delivered to their existing processors.

Among the fishermen, however, and among other communities, there is widespread opposition, and I believe we must fully evaluate those arguments, as well.

The primary question is whether the proposed plan will benefit all the fishery's participants—processors, fishermen and the processing workers and support industries that form the backbone of our communities. At least one community that has received Bering Sea crab in the past will no longer be able to do so. Others, that may in the future be positioned to take Bering Sea crab, will be prevented from doing so.

I recognize that the North Pacific Council has attempted to adjust the plan to provide for competition among processors for the 10 percent of fishing shares that would not be allocated among processors. It has attempted to preserve processing communities by geographic designations and by providing communities with an opportunity to acquire processing rights. And it has attempted to mitigate possible ex-vessel price reductions by mandating a form of binding arbitration.

Are these steps enough?

Will the plan lead to renewed prosperity not just for today's participants, but also to an expansion of activity to new companies and new communities? Or will it lead to fewer economic opportunities in all but a handful of lucky cases?

Will its impacts improve the ability of the fishing and processing industry overall to adjust to changes in other fisheries? Or will it simply cause stagnation?

Will it continue to allow healthy competition? Or lead to a radical consolidation that leaves many communities marooned, with no way to profit from future changes in the market or in the location, abundance, or species mix of the Bering Sea crab resource?

Those are the questions that must be answered, and which leave me wondering.

I hope that today's testimony will shed light on all of them, and look forward to hearing from the experts on all sides.

Senator STEVENS. I would call on, first—oh, wait a minute, here is—Senator Cantwell, do you have an opening statement?

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. I do, Mr. Chairman, but I will have to submit it for the record.

Senator STEVENS. Thank you very much. We will submit it. We have submitted the others. We are happy to have you join us.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Thank you Senator Stevens. I appreciate your continued leadership on these issues and I look forward to working with you and Senator Murray to ensure that the constituents of both of our great states benefit from a fair crab rationalization plan.

As we heard today, managing America's Bering Sea and Aleutian Island crab resources is critical to the continuation of this multimillion-dollar industry.

However, I don't think anyone here today would dispute that the current system is broken and that we must act.

Today's "race to fish" is dangerous, it leads to unsustainable harvests, and it has forced an uneconomic overcapitalization of both the fishing fleet and processor facilities.

The North Pacific Fishery Management Council's plan represents an impressive investment of time and energy.

I would like to publicly thank the Council members for their work and their consideration of the interests of all relevant stakeholders.

With its "three-pie" approach, the plan attempts to balance the interests of harvesters, processors, and communities. However, Congress must decide if this is the fairest and most effective way to rationalize the North Pacific crab harvest.

I look forward to working with my Senate colleagues on this critical issue in the weeks and months ahead.

Senator STEVENS. It is probably not politically correct to say, but obviously this is a regional issue, because there is no one here from outside of our region. Mr. Duffy, let us hear your statement first.

**STATEMENT OF KEVIN C. DUFFY, COMMISSIONER,
ALASKA DEPARTMENT OF FISH AND GAME**

Mr. DUFFY. Thank you, Mr. Chairman. Good afternoon.

I am Kevin Duffy, Commissioner of the Alaska Department of Fish and Game and also the State of Alaska representative on the North Pacific Fishery Management Council. I appreciate the opportunity to be here today to discuss the Council's preferred alternative for the Bering Sea/Aleutian Island's Crab Rationalization Plan.

Rationalization is the path to revitalize the economic health of Bering Sea/Aleutian Island crab fisheries, provided the policy recognize the partnership among harvesters, processors, and communities. The Council sought to ensure this rationalize program maintains the integrity of this partnership by providing incentives for all parties to work toward mutually beneficial goals.

There are two approaches that accomplish this objective. The two approaches that maximize benefits to the Nation and equitably distribute those benefits among the three partners are the voluntary cooperatives and the two-pie allocation of quota share, which, in combination with CDQ allocations and other community elements, is in reality a three-pie scheme. This voluntary three-pie approach approved by the Council in June 2002 recognizes the prior economic interests among harvesters, processors, and communities. This approach fits the Bering Sea crab fishery.

The Council has a pioneering history of designing rationalization programs unique to the fishery at hand. The Council crafted an IFQ program for halibut and sable fish that fit the small-vessel owner-onboard nature of that fishery. For pollock, under direction from Congress, the mechanism was processor-linked cooperatives.

We design rationalization programs to fit the dynamic needs of any particular fishery, as a council. For the large-boat, heavily industrialized corporate nature of the Bering Sea/Aleutian Island crab fisheries, the Council found that a voluntary three-pie coop structure fit best.

I want to emphasize conservation and safety are as much a driving force to rationalize as the need to revitalize the economic health of the industry and communities. Resource protection is embedded within this plan. With extended slower seasons, it is anticipated that dead-loss will be greatly reduced and that already low bycatch levels will decline further.

With more time to prosecute the fishery under IFQs, fewer pots will be lost, and ghost fishing by lost or abandoned pots will be reduced even beyond the current low levels.

To ensure that the resource, its protection, is maintained and is a paramount factor under the Council's jurisdiction, there will be increased monitoring under this program, and the plan the Council developed includes a funding source for that increased monitoring. Most importantly, this Council plan saves lives. The current management scheme results in a derby-style race for fish.

In terms of a brief background for the community, as the Chairman indicated, Congress directed the Council to consider a wide variety of approaches to a rationalized fishery. Early in this process, the Council established a broad-based industry working group to develop options to rationalize the Bering Sea crab fisheries. This workgroup met over a 2-year period to identify workable solutions and to develop a majority opinion. Including the work of the Committee, the Council has studied this issue for well over 3 years, with a detailed analysis of all of the issues brought forward by the Committee, which did include the concept of processor shares.

The first Council action was to unanimously adopt a problem statement that any solution should consider the lack of economic stability for harvesters, processors, and coastal communities. After many revisions and exhaustive public review of the analysis, the Council unanimously adopted a final motion in June 2002, which responded to congressional direction. Since then, the Council continued to work on several trailing amendments and completed its work in April 2003.

Overall, the Crab Rationalization Program strikes a balance among the three parties mentioned. Based on public input—exhaustive public input, I might add—the program was unanimously approved by this Council.

As a Council, we have an obligation to review program performance, especially with respect to the impact on all three partners. The Council is on record that we will make necessary adjustments to achieve our stated goals and minimize unintended consequences. Through program review, we can adjust elements of the initial policy design. This flexibility is uncommon to most market-based rationalization plans. Specifically, the Council can adjust the percentage of these shares, adjust attributes intended to protect community interests, adjust the other mechanisms for community protection, and adjust specific design features of the program to adapt to changes in stock status for the Bering Sea/Aleutian Island crab.

All eligible fishermen under this program gain by having value attached to their fishing history. The Council chose years agreed to by the industry committee and recommended by the advisory panel. Regardless of where a fisherman sits in the qualifying period, the word of quota share generates immediate value and economic gain over the race-for-fish scenario. Furthermore, it is anticipated that consolidation and the ability to stack quota, combined with a buy-back program, could reduce the crab fleet significantly. This results in very significant economic gains to the remaining participants.

Even though the economic gains are recognized by many crab fisherman, there was still a need to address equity issues and balancing of negotiating strength between harvesters and processors. The Council has provided many protective measures to ensure that vessel owners are not disadvantaged. They include a discount of each processor's history, providing for B shares, a system of binding arbitration to assure that no harvester will be forced to accept a price by a processor holding processor shares. Processors will be required, under the program, to give regulators full, complete, and detailed crab processing costs and crab sales revenues.

Caps on the amount of harvesting shares that can be owned by or affiliated with processors are incorporated. This is intended to ensure that the processor will continue to need crab from independent harvesters. We have also prohibited vessels owned processors from being awarded B shares. This was done in order to further protect the interests of independent harvesters.

While not a direct part of the Council's motion to protect fishermen's interests, there is another key advantage that accrues. Currently, harvesters cannot really withhold product from processors for long periods of time, because the current open-access model allows any catcher-processor or strikebreaker to fish while others remain tied to the dock. Once IFQ is issued to harvesters, every harvester can, either individually or as a member of a coop under this plan, withhold product from the processing sector without fear of someone else harvesting it. As learned from the AFA model, the ability to withhold product is a powerful tactic that fishermen can use to leverage fair prices.

The next set of benefactors are the crab processors. Having observed processor fallout from the harvester-only allocation on IFQs for halibut and sable fish, and processor viability under AFA coops, the Council made a deliberate choice to include processors in this program. Processor shares will allow the processing sector to more fully experience the efficiency gains of rationalization; and, thus, remain viable. With the ability to trade and purchase processing shares up to a set limit, it is anticipated that the number of processors available to buy crab may actually increase. At the very least, award of processor shares should stabilize the crab-processing sector so that the number of currently viable processors will remain the same.

Last, the Council chose to provide specific community-protection measures to recognize the investment of communities in the relevant Bering Sea crab fisheries. Noting that the very real likelihood that for those same communities to experience irreparable harm without protection, National Standard 8 of the Magnuson-Stevens Act takes into account the need for sustained participation of fishing communities and minimizing adverse effects on those communities.

There are a number of specific elements of the community protection measures in this plan. In the interest of time, I will pass those over, and please refer to my testimony.

The Council has provided Congress with two comprehensive reports on the Bering Sea/Aleutian Island Crab Rationalization Program. The first report, in August 2002, provided details on the Council's Crab Rationalization Program that was unanimously approved. The second report, dated May 6 of this year, provided details on a set of trailing amendments that included a binding arbitration program, a suite of community-protection measures, details on captain and crew shares, sideboards, and details of a comprehensive data-collection program.

In closing, let me emphasize that while imposing an allocation scheme automatically has varying impacts among the participants, the Council strove to make all sectors—harvesters, processors, and communities—win from Bering Sea crab rationalization. It was a challenging balancing act, to say the least. However, through the

work of the industry committee, the Council staff, the advisory committee, and community representatives, the Council's preferred alternative does benefit all sectors. And, most importantly, the plan will save lives and improve management.

Senator STEVENS. I am going to have to cut you off there, Kevin. Thank you very much.

Mr. DUFFY. Yes, Mr. Chairman.

Senator STEVENS. We have limited witnesses to 10 minutes each so we can have some time for questions here. I would ask you to finish. Yes, sir?

Mr. DUFFY. Just one quick concluding statement, if I could, Mr. Chairman.

Senator STEVENS. Yes, sir.

Mr. DUFFY. Thank you.

The State of Alaska supports implementation of the Crab Rationalization Program as approved by the Council in 2002, including the details addressed through a set of trailing amendments completed in April 2003.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you.

[The prepared statement of Mr. Duffy follows:]

PREPARED STATEMENT OF KEVIN C. DUFFY, COMMISSIONER,
ALASKA DEPARTMENT OF FISH AND GAME

Good afternoon, Mr. Chairman and members of the Committee. I am Kevin C. Duffy, Commissioner of the Alaska Department of Fish and Game. I am also the State of Alaska's representative on the North Pacific Fishery Management Council. I appreciate the opportunity to be here today to discuss the North Pacific Fishery Management Council's preferred alternative for the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Plan.

Thirty years ago, foreign harvesters and processors prosecuted Bering Sea crab fisheries. Then, the Magnuson-Stevens Fisheries Act Americanized these fisheries. The U.S. industry started from scratch, investing in both harvesting and processing capacity. At the same time, Alaska communities invested in the labor and infrastructure to support these fisheries.

The crab fisheries flourished, quickly becoming the most valuable fisheries in the North Pacific. Investments in all sectors grew together and soon there was too much capacity harvesting and processing declining stocks of crab. None of the three partners—harvesters, processors and communities—I currently consider financially healthy. Of particular concern to the State of Alaska are the remote fishery-dependent communities, which are now adversely impacted by the diminished flow of economic activity.

Rationalization is the path to re-vitalize the economic health of these fisheries, provided the policy recognizes the partnership among harvesters, processors and communities. This partnership is like a three-legged stool. Cut out any leg and the stool tips over.

The solution to keeping this stool strong and stable is to ensure that any rationalization program maintains the integrity of this partnership by providing incentives for all parties to work toward mutually beneficial goals. There are two approaches that accomplish this objective. The two approaches that maximize the benefits to the Nation and equitably distribute these benefits among the three partners are the Voluntary Cooperatives and the Two Pie allocation of quota share, which in combination with the CDQ allocations and other community elements, is in reality a Three Pie allocation scheme. This Voluntary Three Pie Cooperative approach, approved by the North Pacific Fisheries Management Council (hereafter referred to as the Council), recognizes the prior economic interests among harvesters, processors and communities. This three-pie approach fits the Bering Sea crab fishery.

The Council has a pioneering history of designing rationalization programs unique to the fishery at hand. The Council crafted an IFQ program for halibut and sablefish that fit the small vessel, owner on-board nature of that fishery. For pollock, the mechanism was processor-linked cooperatives. We design rationalization programs

to fit the dynamics and needs of the particular fishery. For the large boat, heavily industrialized, corporate nature of the BSAI crab fisheries, the Council found that a voluntary, three-pie cooperative structure fit best. Given the Council's history, I fully expect a different model will emerge from the Council for the Gulf of Alaska rationalization process that is currently underway.

I want to emphasize that conservation and safety are as much a driving force to rationalize as the need to re-vitalize the economic health of the industry and communities. Resource protection is imbedded within the Council's plan. With extended, slower seasons it is anticipated that deadloss will be greatly reduced and that the already low bycatch will decline further. With more time to prosecute the fishery, fewer pots will be lost and ghost fishing by lost or abandoned pots will be reduced even beyond the low level that the current regulatory safeguards have resulted in. To ensure that the resource remains a paramount benefactor of rationalization, increased monitoring (with fees to support it) will occur. With voluntary cooperatives, the regulatory units will be smaller and hence administrators and resource managers will benefit as well. Furthermore, ending the "race for the fish" builds a conservation safety net that the Board of Fisheries and the Department of Fish and Game will build and act upon.

And most importantly, the Council's plan saves lives. The current management scheme of the BSAI crab fisheries results in a derby-style "race for fish". This system often puts pressure on participants to fish in unsafe weather conditions, work continuously for long periods without rest. There is also the potential to overload vessels with fishing gear in an attempt to improve returns under these conditions. Falling Guideline Harvest Levels (GHLs) and overcapacity in all crab fisheries has reduced fishing periods and increased the "race" for crab, thus exacerbating safety concerns for BSAI crab vessels.

According to the 1997 and 2001 Occupational Safety and Health studies, the Alaskan commercial fishing industry had a fatality rate 28 times the national occupational average. Within this high-risk industry, the BSAI crab fisheries were found to account for a disproportionately high level of injuries and death. From 1990 to 2001, there were a total of 25 vessels lost, resulting in 40 fatalities. Twenty-one more lives were lost as a result of being swept overboard, crushed by crab pots or entangled in lines or winches. These losses are simply unacceptable. It is these losses that in part compelled the Council to act now and end the dangerous "race for fish."

Examining safety statistics in the Alaskan halibut fishery suggests that rationalization of that fishery has been a force in improving safety. In the five years preceding implementation of the halibut IFQ program (1990 to 1994), 17 fatalities occurred in the halibut fishery. In the 7 years after implementation of the program (1995 to 2001) the number of fatalities in the fishery declined to 4. While no one can predict the number of lives saved, it is anticipated that rationalizing BSAI crab, the most dangerous fishery in the U.S., will have a similar affect on reducing fatalities.

It should also be noted that to the extent that a rationalized management system results in a sustainable, economically viable fishery, then improvements in safety should follow. In economically viable fisheries, harvesters are able to make a profit, and vessel owners are able to invest in better quality equipment, proper vessel maintenance, and hire, train and keep professional skippers and crews. All of these factors help improve safety.

Background on the Council Process

Congress directed the Council to consider a wide variety of approaches to a rationalized fishery. As part of the Consolidated Appropriations Act of 2001 (Pub. L. No. 106-554), Congress directed the Council to examine fisheries under its jurisdiction to determine whether rationalization was needed. The specific legislative language is:

The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner.

Early in the rationalization process, the Council established a broad-based industry working group to develop options to rationalize the Bering Sea crab fisheries.

This work group met over a two-year period to identify workable solutions and to develop a majority opinion. Including the work of the BSAI Crab Committee, the Council has studied this issue for well over three years, with a detailed analysis of all the issues brought forward by the Committee which included the concept of processor shares. Additionally, the Council held hearings in major ports and communities of Alaska, Washington, and Oregon.

The first Council action was to unanimously adopt a problem statement that any solution should consider “the lack of economic stability for harvesters, processors and coastal communities”. Adopting this problem statement allowed for the detailed analysis of numerous options. To assist in our understanding of the impacts of the various options on all participants, we employed several specialists to work with Council staff. After several revisions and an exhaustive public review of the analysis the Council then *unanimously* adopted a final motion in June 2002, which responded to Congressional direction. Since then, the Council continued to work on several trailing amendments and completed its work on BSAI Crab Rationalization in April 2003.

Key Elements of the Council’s Motion (includes trailing amendments)

- *Harvest shares* will be allocated for 100 percent of the total allowable catch (TAC). The qualifying years selected for these shares were the years recommended by the BSAI Crab Committee and the Advisory Panel.
- *Processing shares* will be allocated for 90 percent of the TAC. The qualifying years selected for these shares were the years recommended by the BSAI Crab Committee.
- *Regional share designations* will apply to all processor shares and to the corresponding 90 percent harvest shares. The regional designation recognizes historic delivery patterns and distributes landings between two specific regions.
- There is *no linkage* between harvest shares and processing shares. Harvesters are free, within regions, to match up shares with any processor that hold processing shares. *Ten percent of the harvester’s allocation will remain available to deliver to any processor* (called B shares) whether or not that processor was eligible to receive an initial allocation of processing shares.
- *Voluntary harvester cooperatives* are encouraged and once formed should achieve efficiencies through the coordination of harvest activities and deliveries to processors. It is anticipated that these cooperatives will also serve as a forum for profit-sharing arrangements similar to American Fisheries Act (AFA) cooperatives.
- *Community Development Quota allocations* will be increased from 7.5 percent to 10 percent of the TAC. A community quota of brown crab was also established for Adak, a similarly situated community that lies outside the CDQ program.
- A *cool down period* that would restrict the movement of processing activity from crab dependent communities for a period of two years following implementation of the program.
- Allow communities to purchase harvest and processing shares and grant crab dependent communities the *right of first refusal to purchase processing shares* that may transfer outside of the communities. Grant communities in the Northern Gulf of Alaska the right of first refusal on the sale of processor shares from communities that are not dependent on the crab fisheries.
- A *captain share allocation* of 3 percent of the TAC was established for exclusive use by captains and crew.
- A *vertical integration cap* of 5 percent is used to control processor accumulation of harvesting privileges.
- *Use and ownership caps* on harvesting and processing privileges are included to limit consolidation and excessive control.
- A *mandatory binding arbitration* program will be used to settle any outstanding price disputes between harvesters and processors.
- A *crew loan program* will assist crewmember entry into the fisheries.
- Harvest restrictions, (called GOA sideboards) were included to *protect non-rationalized Gulf of Alaska fisheries*.
- *Comprehensive data collection and program review* will be used to assess the success of the rationalization program and to make modifications where needed.

As a Council, we have an obligation to review program performance, especially with respect to impacts on all three partners. And we *will* make necessary adjust-

ments to achieve our stated goals and minimize unintended consequences. Through program review we can adjust elements of the initial policy design. This flexibility is uncommon to most market based rationalization plans. Specifically, we can

1. adjust the percentage of B shares.
2. adjust attributes intended to protect community interests in a region.
3. adjust the mechanism for community protection.
4. adjust specific design features to adapt to changes in stock status.

Overall, the crab rationalization program strikes a balance among the interests of harvesters, processors, and communities. The Council, based on exhaustive public input over three years, unanimously approved the crab rationalization program. In making this unanimous vote Council members recognized the comprehensive, balanced approach that incorporated both short and long-term safeguards to protect the interests of all three partners.

Benefits for Harvesters, Processors and Communities

Now, I would like to address the how and why involved in creating a stable three-legged stool, where harvesters, processors and communities each benefit from crab rationalization. First in the line of benefactors are the fishermen. All eligible fishermen gain by having value attached to their fishing history. Some will have more value than others. The years selected for qualifying quota share determine the extent that each fisherman gains. The Council chose the years agreed to by the industry committee and recommended by the Advisory Panel. More recent years were also considered, and in a few cases adopted, based on NOAA general counsel's advice to consider recency for qualification determinations. Regardless of where a fisherman sits in the qualifying period, the award of quota generates immediate value and economic gain over the race-for-fish scenario. Furthermore, it is anticipated that consolidation and the ability to stack quota, combined with a buy back program, could reduce the crab fleet significantly. This results in very significant economic gains to the remaining participants.

Even though these economic gains are recognized by many crab fishermen, there was still a need to address "equity issues" and balance of negotiating strength between fishermen and processors. With respect to these issues, the Council provided many protective measures to ensure that vessel owners are not disadvantaged. They include:

- A discount of each processor's history, which leaves 10 percent of the harvest shares (B shares) open to delivery to any processor. It is anticipated that these B shares will provide adequate negotiating leverage for fishermen.
- A system of binding arbitration that to ensure that no harvester will be forced to accept a price by a processor holding processor shares. The system will be conducted using an independent third party arbitrator when or if there is a price dispute between harvesters and a processor. It will include an opportunity for groups of harvesters to bargain collectively, as they have traditionally for Bering Sea crab prices, or to enter arbitration on an individual basis. The binding arbitration approach adopted by the Council also provides for independent market analysis and a non-binding pre-season price formula.
- Processors will be required to give the regulators full, complete and detailed crab processing costs and crab sales revenues. This information will be useful for the Council to monitor the way revenues are shared with vessel owners.
- Caps on the amount of harvesting shares that can be owned by or affiliated with processors. This is intended to ensure that the processor will continue to need crab from independent harvesters.
- Prohibiting vessels owned by processors from being awarded "B" harvest shares. This was done in order to further protect the interests of independent harvesters.

While not a direct part of the Council's motion to protect fishermen's interest, there is another key advantage that accrues to fishermen as a result of rationalization. Currently, harvesters cannot really withhold product from processors for long periods of time because the current open-access model allows any catcher processor or other strike breaker to fish while others remain tied to the dock. Once IFQ is issued, every harvester can—either individually or as a member of a cooperative— withhold product from the processing sector without fear of someone else harvesting it. As learned from the AFA model, the ability to withhold product is a powerful tactic that fishermen can use to leverage fair prices.

It is also important to point out that the Council instituted caps on the amount of consolidation that may occur among the processors. The consolidation rules are far more restrictive than what would be required under normal antitrust laws, and they are intended to ensure multiple market opportunities. Furthermore, when crab stocks are low, a quota system that includes processors should result in less concentration of processing facilities and more buying entities as firms could choose to lease quota or have their shares custom processed. These measures to keep the existing processing base healthy while allowing for new entrants should expand, not limit, market opportunities for fishermen.

The next set of benefactors are the crab processors. Having observed processor fallout from the harvester only allocation on IFQs for halibut and sablefish, and processor viability under the AFA cooperatives, the Council made a deliberate choice to include processors in the rationalization program. This decision to protect processor's investments also responds to the Congressional direction given to the Council.

Under the sablefish IFQ program (note: sablefish is a more appropriate comparison than halibut because sablefish did not change product form from frozen to fresh) only 25 of the 67 pre-IFQ firms survived the harvester only allocation of quota according to thorough analysis done by Washington State University. Additionally, most of the surviving processing firms lost market share. Processor shares will allow the processing sector to more fully experience the efficiency gains of rationalization and thus remain viable. With the ability to trade and purchase processing shares, up to a set limit, it is anticipated that the number of processors available to buy crab may actually increase. In the very least, award of processor shares should stabilize the crab processing sector so that the number of currently viable processors will remain the same.

Similar to fishermen, processors have concern that they will be "price takers". Currently, some processors estimate that fishermen capture upwards of 87 percent of the wholesale price of crab. Crab harvesters are organized under the 1934 Act, into a monopolistic bargaining association and as such, negotiate price as one entity represented by the Alaska Marketing Association. The processors are not similarly organized and argue that the bargaining strength is all in the fishermen's hands. This perspective suggests that like beauty, bargaining strength is in the eyes of the beholder, or the potential loser in this case. Nonetheless, the Council's approach to binding arbitration, data collection and program review are aimed to protect the processing sector as well.

Lastly, the Council chose to provide specific community protection measures to recognize the investment of communities in the development of the Bering Sea crab fisheries, noting the very real likelihood for those same communities to experience irreparable harm without protection. As you know, National Standard 8 of the Magnuson-Stevens Act directs Fishery Management Councils to take into account (a) the need for sustained participation of fishing communities and (b) minimizing adverse economic impacts to such communities. The Council chose to address communities and National Standard 8 through a "three pie" approach to rationalizing the crab fisheries in the Bering Sea. There are two key elements to the community third pie—(a) market-based allocations to community interests and (b) measures to protect communities from potentially adverse effects. Following are the specific elements of the "community third pie".

Market-based Allocations to Community Interests include:

- Expanding the CDQ program (includes 65 Western Alaska communities) to include all crab fisheries approved under the rationalization program with the exception of Western AI brown king crab.
- Increasing the CDQ allocation of crab from 7.5 percent to 10 percent.
- Allocating the percentage of Western AI brown king crab not used during the base period to the community of Adak and require that up to 50 percent of the "A" share brown king crab be processed in Adak.
- Allowing for purchase of processing and harvesting shares by crab dependent communities not included in the CDQ program. Give these same communities the right of first refusal for processing shares that may leave their communities after a two-year cool down period. Grant communities in the Northern Gulf of Alaska the right of first refusal on the sale of processor shares from communities that are not dependent on the crab fisheries.

Community Protection Measures include:

- Establishing two regions to protect historical, primary delivery patterns of various crab species and attach regional designations to crab harvested with Class A shares and to processing quota shares.

- Maximizing the benefits of regionalization on the communities of St. Paul and St. George by limiting B shares to 10 percent of the total amount of crab.
- Imposing a two-year (post implementation) cool down period where processing shares must remain in the originating community.
- Imposing processing use caps to assure that at least two plants will always be operating in the Northern Region and four plants in the Southern Region.
- Limiting the future expansion of the offshore catcher processor fleet so that more crab might be processed in community based plants.
- Requiring that a portion (equivalent to the increase received) of CDQ crab be delivered to shore-based plants.
- Allowing for the transfer of catcher processor shares to shore-based processors.
- Providing a 3 percent allocation to help captains, some of who reside in coastal communities, to leverage future employment opportunities in a rationalized crab fishery.
- Excluding small, underutilized crab stocks from the rationalization program so that small vessel, state water fisheries could be developed near communities.

The direct allocation of harvesting and processing shares, and purchase of processing shares by communities, translates into direct benefits to Alaska's coastal communities. These actions in conjunction with the regionalization elements comprise the "meat of the third pie".

Although processor shares are typically viewed as part of the second pie, the issuance of such shares has direct implications for the protection of a community's processing base. As noted above, experience to date with the issuance of harvester only allocation in Alaska reveals a dramatic reduction and shift in shore based processing operations. While the causes for this shift and reduction are complex and debatable, it is good public policy to try and minimize these impacts, as the more processors that survive the transition to a 'rationalized fishery' the better the community's economic base will be. Such a system inherently benefits communities as well as processors. Furthermore, the establishment of processor shares allowed for the creation of additional community protection measures. In essence, the processor pie helps makes the community pie whole.

Catcher Processors

There remains one more sector that benefits from the Council's action—catcher processors. Catcher processors have long had an advantage over all other sectors participating in the harvesting and processing of BSAI crab. This advantage comes about from being 100 percent vertically integrated operations, which do not have to purchase all their crab. The Council's action solidified this sector of the industry through the creation of catcher processor shares. However, the Council chose not to allow this sector to grow at the expense of the onshore sector and disenfranchise Alaska's coastal communities. Hence, the Council's program limits catcher processors to their historical aggregate level. In essence, the Council made the catcher processor sector whole without being punitive and for some fisheries such as the Aleutian Islands brown king crab, the Council chose qualifying years that advantaged catcher processors.

Criticism of Council Action

Despite the balanced approach of the Council motion and extensive efforts to be inclusive of all affected parties, the Council action still faces criticism. I will take some time to address the following concerns:

- Not including the year 2000 for processing shares
- Not creating a higher portion of B shares
- Antitrust implications of processing shares.

Year 2000

It is reported that including 2000 would have benefited Kodiak based processors. While it is true that the year 2000 was one of Kodiak's better years in terms of BSAI crab landings, the Council analysis shows that Bristol Bay Red King Crab comprised 1.8 percent of the total value of fish landed at the port of Kodiak and Bering Sea Opilio Crab represented 1.35 percent of the total value landed in the year 2000.

It is important to note that the year 2000 was not included in the recommendations made by the industry committee which, incidentally, included Kodiak representatives who did not bring this concern forward. The committee noted that the year 2000 was not included for a number of reasons: (a) it was the only year that had a delayed start date of April 1 due to inclement weather and some vessels did

not participate with the season change date; (b) it was the only potentially qualifying year affected by the AFA processor sideboards; and (c) a large storm greatly disadvantaged some small Alaskan vessels. As such, the year 2000 was seen as an anomaly and not included in the recommendations or in the Council actions.

Nonetheless, processors in Kodiak will still benefit from the rationalization program, as they will no longer just be the port of last load delivery. With a slower, extended fishery fishermen will have the time to deliver mid-season to Kodiak processors. There are processors in Kodiak who will receive processor shares. Other processors in Kodiak have the option of buying processor shares or receiving "open delivery" B-shares of crab. In fact, Kodiak, home to Alaska's largest crab fleet, is the port that is expected to benefit most from the 'open delivery' arrangement. To help ensure this, the Council made B-shares off limits to catcher processors.

Kodiak is not the only community to gain under the Council's rationalization plan. Dutch Harbor, St. Paul, St. George, Adak, Sand Point and all the communities under the CDQ program gain in the Council's three-pie approach to rationalization.

Why 10% B Shares

In determining the appropriate amount of B shares, the Council first looked to the experience under AFA. In the AFA there is a similar 10 percent discount on processing history, *i.e.*, vessels may deliver up to 10 percent of their catch to any processor. Immediately after AFA passage, many harvesters tried to get the Council to amend the AFA agreement. They did so under the Dooley-Hall proposal. There were claims that the processors would capture all the profits. Today, if one were to ask key Dooley-Hall advocates if they are disenfranchised and would prefer no AFA or AFA as originally passed, their answer is unequivocal: AFA as enacted by Congress. This suggests that a 10 percent discount could serve as adequate negotiation leverage in a large-boat industrialized fishery.

Based on the cost and wholesale data provided by crab processors, it does not make sense to discount processor history any more than the 10 percent level selected by the Council. Data was provided to the Council in public testimony that shows that processor margins are very thin, and probably non-existent in the small quota, slow-paced crab fisheries. With these low margins, processors will be hungry for all deliveries of crab, especially the crab delivered last. Once the start-up and initial operation costs have been covered, the remaining loads of delivered crab are where the margins increase and profits are realized.

Additionally, crab fishermen (through their bargaining association) now allocate crab as a reward for a company setting the price, a price that in turn is adopted by the rest of the companies. The amount allocated has been less than 5 percent to achieve this advantage. This demonstrates the power of having 10 percent (or less) of the crab to allocate to processors as a reward for higher price. As such, the notion that the fishermen delivering last will become a price hostage is a notion unsupported by existing economic reality. No one will fish A-shares without a contract. There will be no "last harvester leaving the grounds." Furthermore, with the adoption of voluntary cooperatives between fishermen and in discussions with a processor of their choice, it is anticipated that price and profit-sharing arrangements will: (a) cover *all* the crab the harvester intends to deliver, including the 10 percent B shares portion; (b) address profit sharing across vessels participating in the cooperative; and (c) be agreed to well in advance of the season.

Public testimony from the community of St. Paul also pointed out that a higher amount of B shares would negatively impact their economic base. The balancing act of community interests required the Council to consider these concerns as well when determining the appropriate amount of B shares.

Antitrust Issues

The Department of Justice has not found any anti-competitive effects in the division of whiting allocations among catcher-processors or the division of pollock allocations among AFA cooperatives. It is expected that the Department will view the crab rationalization plan in a similar light. The Congressional Research Service has already made a similar review of the Council's action to create processor shares and concluded "that the Federal antitrust laws are likely to be deemed irrelevant in the context of the subject proposal".

Even with this green light from the Congressional Research Service it is important to note that the same anti-competitive issues that are being raised under crab rationalization were brought up under the AFA. Since the processor provisions of the AFA had no anti-competitive effects, then the less restrictive processor elements included in the Council approach on BSAI Crab Rationalization should be viewed similarly. The less restrictive provisions of the Bering Sea/Aleutian Islands (BSAI) crab rationalization program include: (1) no closed class of processors (new proc-

essors can purchase 'open delivery' B shares or allocated shares from a qualifying processor); and (2) no direct linkage between fishermen and processors.

The 1934 Fisherman's Marketing Act contains an explicit statutory exemption from the antitrust laws allowing fishermen to bargain collectively in price negotiations with fish processors. The fishermen are allowed to decide, as a group, on their bargaining position, an activity that would violate the Federal antitrust laws without the exemption.

The Whiting Cooperative (vertically integrated catcher processors) and the AFA inshore cooperatives have each submitted to the Department of Justice a request for a "business review letter" concerning planned cooperative activities. Section 210 of the AFA requires each cooperative to request a business review letter prior to submitting the cooperative contract to the Council and the Secretary. Each cooperative described its proposed activities of allocating pollock quotas among member vessels. In response, the Department of Justice has issued the requested business review letters stating that the Department of Justice finds that the described activities are not anti-competitive and the Department intends to take no enforcement action. However, the AFA does not require the cooperative to have received a business review letter and the AFA does not grant an exemption to the antitrust laws. While we anticipate a similar ruling for crab cooperatives, if Congress approves the Council's crab rationalization plan, this is a non-issue.

Concluding Remarks

In closing let me emphasize that while imposing an allocation scheme automatically has varying impacts among the participants, the Council strove to make all sectors—harvesters, processors, and communities—win from BSAI crab rationalization. It was a challenging balancing act to say the least. However, through the hard work of the industry committee, the Council staff, the Advisory Panel and the community representatives, the Council's preferred alternative does benefit all sectors. And most importantly, BSAI Crab Rationalization will save lives and improve management while reducing bycatch and deadloss.

The program is a Voluntary Three Pie Cooperative with unique protections and opportunities for communities and captains. The novelty of the program compelled the Council to include several safeguards into the program, including a binding arbitration program for the resolution of price disputes and extensive data collection and review programs to assess the success of the rationalization program. These safeguards demonstrate the Council's commitment to a fair and equitable rationalization program that will protect the interests of all sectors which depend on these crab fisheries.

In unanimously adopting the crab rationalization plan, the Council made it very clear that the program was one crafted specifically for the crab fisheries of the Bering Sea/Aleutian Islands, and that in so doing no one should assume a similar system for other fisheries under its jurisdiction. We have met the charge given to us by Congress. We have acted responsibly and creatively to meet all the standards of the Magnuson-Stevens Act. It is time for Congress to move the plan to rationalize these crab fisheries forward.

Senator STEVENS. Ms. Freed?

STATEMENT OF HON. LINDA FREED, CITY MANAGER, CITY OF KODIAK

Ms. FREED. Thank you.

Senator STEVENS. Could you pull that mike up toward you?

Ms. FREED. Is that close enough for you?

Senator STEVENS. Not quite. Thank you.

Ms. FREED. Thank you.

For the record, my name is Linda Freed. I have been a resident of Kodiak, Alaska, for 23 years, and I now have the privilege of serving as the City Manager of the City of Kodiak.

I would like to note, for your information, that in the audience today is the Honorable Carolyn L. Floyd, Mayor of the City of Kodiak, and Dave Woodruff, a council member from the City of Kodiak. In addition, Dick Powell, a long-time Kodiak City resident and a Bering Sea crab fisherman, is also here.

Kodiak is a major fishing port in the United States. It has been consistently in the top communities for both product landed, the volume of product landed, and the value of that product. Kodiak has the largest resident fishing fleet in the State of Alaska and the largest resident population of processing workers.

Crab rationalization and the issue of processor quota shares are critical to the City of Kodiak and all its residents. Kodiak has already lost 70 children from our school system within this last year due to the closure of processing plants and reductions in our fishing fleet. Kodiak is a fishing town, and we cannot afford to see our primary source of natural-resource employment taken from our residents by either fisheries managers or Congress.

The City of Kodiak is opposed to the North Pacific Fisheries Management Council's request that Congress pass special legislation to create individual processor quotas, or IPQs to establish individual monopoly markets for processing crab harvested from the Bering Sea. If enacted, the Council's proposal would grant each member of a select group of companies the exclusive right to process specific percentages of the Bering Sea crab after it has been harvested by independent fishermen. Under the Council plan, each fisherman would be forced to deliver 90 percent of their catch to one of a select group of processing companies that are issued an IPQ.

The City of Kodiak is not alone in its opposition to the Council's unprecedented proposal. All of the regional Governments with communities where crab is processed—the Aleutians East Borough, the Lake and Peninsula Borough, the Kodiak Island Borough, and the Kenai Peninsula Borough—are all seriously concerned about this proposal. The Aleutians East Borough and the Kenai Peninsula Borough have gone further and passed formal resolutions opposing the Council plan, as have the cities of Sand Point, Chignik, Homer, and Seldovia, just to name a few. In fact, the only communities on record supporting the Council proposal are Dutch Harbor and Akutan. Even St. Paul, a community in the middle of the Bering Sea crab fishing grounds, is divided about whether to support or oppose IPQs. In fact, TDX, the village corporation for St. Paul, and the City of Kodiak find ourselves in similar circumstances. We both own processing plants that have processed crab. We are not eligible to have IPQs because we did not run those plants ourselves.

The adverse impacts of IPQs on Alaskans are tremendous. Fishing communities that depend on independent fishermen and local processing plants for the mainstay of our economies will be devastated if Congress enacts this IPQ proposal. IPQs will mean the loss of innovation and competition within the processing industry. Companies with IPQs will not have to remain efficient, establish new product lines, or offer to process less valuable species in order to attract more deliveries. With a guaranteed share of the harvest, companies with IPQs will maximize their profits by minimizing what they pay for crab and reducing their investment in their facilities.

The City of Kodiak alone stands to lose between \$3 million and \$10 million a year in revenues to our community and lost fish taxes if the Council's plan is implemented. I must say that we had to

have that analysis done on our own, because the State of Alaska did not provide that kind of economic analysis for our community.

The community protection provisions that have been proposed by the Council do not protect Kodiak and many other coastal communities. One provision is a right of first refusal on a proposed sale of IPQs between two companies. However, a community must meet all of the terms and conditions of the agreement between the two private parties and provide full payment within 120 days. This means that the two private parties, one of whom is a buyer, has a vested interest in making sure a community cannot afford to exercise its option, and they have every incentive to include provisions in the agreement that are poison pills to the community. Most communities would need 120 days just to start financing negotiations, much less make full payment of potentially millions of dollars. And there is no appeal process under the Council plan if a community does, in fact, try to exercise its right and is unable to do so. The Council's IPQ plan effectively returns Alaska fishing communities to the days before statehood, when our State fishery resources were under the control of a few large processing companies. The Council's own documents show the extent to which a few processors will control Alaska's fisheries if this plan is enacted.

In 1998, Congress enacted the American Fisheries Act, which created a closed class of processors for the inshore delivery of Bering Sea pollock. The AFA granted six companies exclusive right to process the entire 50 percent of the Bering Sea pollock that was AFA decreed to be delivered inshore. All six of those AFA companies also process crab. According to the Council's own preliminary analysis, those six AFA processing companies will be granted IPQs approximately equal to 75 percent of the Bering Sea opilio and red king crab harvest. Perhaps coincidentally, five of those AFA companies are also defendants in the ongoing Bristol Bay salmon anti-trust lawsuit in Anchorage.

As many Members of the Committee are aware, Kodiak and other Alaskan coastal communities are in the midst of a long-term crisis in the salmon industry. IPQs will make this even worse. The combined effect of the closed class of pollock processors and IPQs will virtually ensure that there is no solution to the salmon problem. One of the AFA companies, Wards Cove, has used its guaranteed pollock revenue to enable it to withdraw from salmon processing marketing entirely. They no longer need the marginal income from their salmon operations. Other AFA companies have reduced their salmon buying in the years since the AFA passed despite the considerable increase in revenues and financial stability provided by the AFA. Add the guaranteed revenue from crab IPQs, and these companies have even less incentive to expend money to gain marginal revenue from salmon.

We need to attract new and innovative processors to our salmon industry. The Council plan just locks in the same old companies that have created the mess we currently find ourselves in.

Despite the overlap in companies that benefit under the AFA and the Council's proposal, it needs to be stressed that the benefits granted to processors under the AFA and the IPQ plan are not the same. The fact that Congress passed the AFA provides no basis for Congress to pass IPQs. IPQs confer more benefits and far greater

market power to crab processors than pollock processors received under the AFA.

And I would like to refer you to an attachment to my testimony, by Dr. Halvorsen, that points out the significant differences between the AFA and the plan proposed by the Council.

The simple truth is that IPQs are nothing more than an economic allocation of markets. They are a ransom that processors are demanding before they will allow the crab fishery to be rationalized to improve conservation and fishing safety. There is no fishery management or community-protection justification for IPQs.

The push for IPQs will not stop with crab. The Council is already considering plans to rationalize the Gulf of Alaska groundfish fisheries, and some Gulf of Alaska fish processors are demanding that IPQs be included. Further, a recent report on the crisis in salmon fisheries suggested that IPQs may be needed for salmon fisheries. Congress has already passed special legislation for pollock and is being asked again to pass special legislation for crab. If Congress authorizes crab IPQs, the floodgates will be opened, and Congress will be besieged with requests for special legislation for each fishery off Alaska.

Having Congress legislate fishery by fishery is precisely what the Magnuson-Stevens Act was designed to prevent. Congress needs to send a clear message that IPQs will not be allowed. Once that message is delivered, it will be easy for the Council to quickly implement an individual fishing-quota program under its existing authority that will address the legitimate concerns of fishermen, communities, and processors.

Thank you for the opportunity to present this testimony. And I would ask if the Committee could keep the record open for another 10 days, because we do have some additional information we would like to present you with.

Thank you.

[The prepared statement of Ms. Freed follows:]

PREPARED STATEMENT OF LINDA FREED, CITY MANAGER, CITY OF KODIAK, ALASKA

My name is Linda Freed. I have been a resident of Kodiak, Alaska for 23 years and now have the pleasure of serving as the City Manager for the City of Kodiak. Kodiak is a major fishing port in the United States, and has consistently been among the top three fishing ports for both volume and value. Kodiak has the largest resident fishing fleet in Alaska and also the largest resident population of processing workers.

Crab rationalization and the issue of processor quota shares are critical to the City of Kodiak and all of its residents. Kodiak has already seen 70 children leave our schools in the last year due to the closure of processing plants and reductions in the fishing fleet. Kodiak is a fishing town, and we can not afford to see our primary source of natural resource employment taken from our residents by fishery managers or the Congress.

The City of Kodiak is opposed to the North Pacific Fishery Management Council's request that Congress pass special legislation to create Individual Processor Quotas—IPQs—to establish individual monopoly markets for processing crab harvested in the Bering Sea. If enacted, the Council's proposal would grant each member of a select group of companies the exclusive right to *process* a specific percentage of the Bering Sea crab after it has been harvested by independent fishermen. Under the Council plan each fisherman would be forced to deliver 90 percent of their catch to one of the select group of processing companies that are issued an IPQ.

Many Alaskans are frankly stunned that Congress would seriously consider the Council's proposal for IPQs. An analogy to another independent American industry might help the Committee understand our dilemma. Congress established permits

for ranchers to graze their cattle on Federal land when the west was fenced a century ago. Those permits are akin to individual fishing quotas. What the Council has proposed to address the “harm” to processors caused by individual fishing quotas is the equivalent of granting a select few companies the exclusive right for each of them to process a set percentage of all of the beef products made from cattle grazed on Federal land, and then requiring each rancher to deliver 90 percent of the cattle grazed on Federal land to one of those companies—all in the name of protecting the meat packing companies from the harm caused by granting grazing rights on Federal land to independent cattle ranchers.

The City of Kodiak is not alone in its opposition to the Council’s unprecedented proposal. All of the regional governments with communities where crab is processed the Aleutians East Borough, Lake and Peninsula Borough, Kenai Peninsula Borough, and Kodiak Island Borough—are seriously concerned about the Council proposal. The Aleutians East Borough and the Kenai Peninsula Borough have passed formal resolutions opposing the Council plan, as have the cities of Sand Point, Chignik, Homer, and Seldovia, to name a few. In fact, the only communities on record supporting the Council proposal are Dutch Harbor and Akutan. Even St. Paul, a community located in the middle of the crab fisheries, is divided about whether to support or oppose IPQs.

The adverse impacts of IPQs on Alaska are tremendous. Fishing communities that depend on independent fishermen and local processing plants for the mainstay of their economies will be devastated if Congress enacts this IPQ proposal. IPQs will mean the loss of innovation and competition within the processing industry. Companies with IPQs will not have to remain efficient, establish new product lines, or offer to process less valuable species in order to attract more deliveries. With a guaranteed share of the harvest, companies with IPQs will maximize their profits by minimizing what they pay for crab and reducing their investment in facilities. To enable the IPQ companies to do just that the Council included in their plan a binding arbitration proposal supported by the processors, community protection provisions that are mere window dressing, and explicit language to ensure that processors could consolidate facilities by transferring and leasing IPQs.

The effects are not limited simply to fishermen and processing plant workers. The City of Kodiak alone stands to lose between \$3,000,000 and \$10,000,000 *a year* in revenues to the community and lost fish taxes if the Council’s plan is implemented. Because neither the Council nor the State has undertaken an economic impact analysis of the Council proposal, the City had to hire its own economist to provide these figures. A copy of that analysis by Richard Tremaine is attached to my testimony.

Other communities face an even more daunting prospect—under the Council plan a processor could transfer its IPQ out of their community and leave them with a crab processing plant which no one can use because there are no IPQs available to allow that plant to operate. The community would be legally barred by Congress from getting a new processor to come in and operate in their community.

Kodiak fishermen and processors are also directly harmed by this proposal. Alaska Fresh Seafood, a long time Kodiak processor that helped pioneer the Bering Sea crab fisheries, would be unable to process crab caught by the fishermen that are part owners of the plant because, under the restrictive criteria selected by the Council, Alaska Fresh would receive IPQs equal to far less than what they historically processed. In fact, the Council’s own analysis of their proposal shows that the 12 largest processors receiving IPQ under the plan would get nearly 20 percent more than they have historically processed—to the detriment of Kodiak processors who have already been locked out of entering the Bering Sea pollock processing market.

Another Kodiak example of the absurd nature of the Council’s IPQ plan is illustrated by Dick Powell, a long time Kodiak fisherman who operates both a crab catcher processor and a crab fishing boat. Under the Council plan Dick would be unable to use his own catcher processor to process crab from his own fishing boat. Once again the Council’s plan operates to thwart competition and free enterprise.

Alaska coastal communities fare no better under the Council plan. The so-called “community protection provisions” are nothing of the kind. What the Council has offered to communities is a first right of refusal on a proposed sale of IPQs between two private companies. However, a community must meet ALL of the terms and conditions of the agreement between the two private parties, and provide full payment within 120 days. This means that the two private parties, one of whom (the buyer) has a vested interest in making sure a community can’t afford to exercise its option, have every incentive to include provisions in the agreement that are poison pills to the community. Most communities would need 120 days just to start financing negotiations, much less make a full payment of millions of dollars. And there is no appeal process under the Council plan if a community does in fact try to exercise its right and is unable to do so.

I was a member of the Community Protection committee appointed by the Council chairman, and have to say that the process was nothing more than a sham. The committee was under instruction not to consider anything that was outside the scope of the IPQ alternative that the Council had already adopted unless $\frac{3}{4}$ percent of the Committee members agreed to discuss it. As a result the Committee was unable to have any discussion of, let alone take any action on, substantive proposals that would have addressed the impacts of IPQs on Kodiak and other coastal communities.

The City of Kodiak also takes exception to the May 6, 2003 letter the Chairman of the North Pacific Fishery Management Council sent to Congress. The letter once again attempts to mislead Congress about the support for this plan by referencing an 11 to 0 vote that occurred in June of 2002, *before* all of the details of the Council plan were known to the public or even to Council members. Since that time the Council has had 6 to 5 votes approving various elements of the "safeguards" promised to communities and fishermen at that June meeting. Now that the details of the entire plan are known, only one fishing group controlled by processors and two Alaska communities remain in support of the IPQ plan.

Contrary to the claim of the Council chairman, the Council has NOT taken final action on the entire suite of crab rationalization options. The Council was scheduled at their upcoming meeting in Kodiak this June to vote to put out for public review a draft analysis of the entire package that includes the work done over the past year. But the Council chairman chose to pull crab rationalization from the June agenda rather than have to report to Congress a less than unanimous vote in support of the entire IPQ plan. In addition, by delaying action until the fall, the Council chairman has denied the public and the Congress access to the Council's detailed analysis of the IPQ alternative and an individual fishing quota only alternative that is also being considered as part of the National Environmental Policy Act process.

The Council's IPQ plan effectively returns Alaska fishing communities to the days before Statehood, when our State fishery resources were under the control of a few large processing companies. IPQs grant an exclusive right to process a specific percentage of the crab harvest to a particular company, and the company may choose to process all of their percentage at any facility that they own within the region. In fact, the Council has gone out of its way to ensure that processors have an unrestricted right to consolidate their IPQs at any facility they own within the two regions—north and south—that are created under the Council plan. Consolidation for processors is nothing more than a euphemism for closing plants in remote Alaska coastal communities.

The Council's own documents show the extent to which a few processors will control Alaska's fisheries if this plan is enacted. In 1998 Congress enacted the American Fisheries Act (AFA), which created a closed class of processors for the inshore delivery of Bering Sea pollock. The AFA granted six companies the exclusive right to process the entire 50 percent of the Bering Sea pollock that the AFA decreed must be delivered inshore. No other processing companies are allowed to process that pollock, regardless of their history in Alaska's other fisheries. All six of those AFA companies also process crab. According to the Council's own preliminary analysis, those six AFA processing companies will be granted IPQs equal to approximately 75 percent of the Bering Sea *opilio* and red King crab harvest. Perhaps coincidentally, five of those AFA companies are also defendants in the ongoing Bristol Bay salmon anti-trust lawsuit in Anchorage.

As many members of the Committee are aware, Kodiak and other Alaskan coastal communities are in the midst of a long term crisis in the salmon industry. IPQs will make this crisis even worse. The combined effect of the closed class of pollock processors and IPQs will virtually ensure that there is no solution to the salmon problem. One of the AFA companies—Wards Cove—has used its guaranteed pollock revenue to enable it to withdraw from the salmon processing market entirely—they no longer need the marginal income from their salmon operations. Other AFA companies have reduced their salmon buying in the years since the AFA passed, despite the considerable increase in revenues and financial stability provided by the AFA. Add the guaranteed revenue from crab IPQs, and these companies have even less incentive to expend money to gain marginal revenue from salmon.

Even more to the point, Nippon Suisan, an AFA company that will receive IPQs equal to roughly 15 percent of the Bering Sea crab under the Council plan, is also among the largest owners of Chilean salmon farms. They clearly have no interest in seeing Alaska salmon compete in the market place with their more expensive farmed product. How does Congress expect to ever solve the salmon problem if they allocate exclusive access and specific market share rights to the very same companies that dominate the dying salmon industry. We need to attract new and innova-

tive processors in salmon. The Council plan just locks in the same old companies that have created the mess we are in.

Perhaps the greatest irony is that if IPQs had been granted 30 years ago, two of the six AFA companies—Trident and Icicle—would never have come into existence. Both of these U.S. processing companies were formed by fishermen who were unhappy with the price being paid by the existing processors. In fact, many of the fishing companies operating in Kodiak and throughout Alaska were formed by fishermen who wanted to get a better price for their fish. The Council proposal would end that competitive market process for fish processing, because no new entrant can hope to compete against companies like Trident, Nippon Suisan, and Maruha when those companies have a closed class for pollock and an exclusive right to process crab.

Despite the overlap in companies that benefit under the AFA and the Council's proposal, it needs to be stressed that the benefits granted to processors under the AFA and the IPQ plan are not the same. The fact that Congress passed the AFA provides no basis for Congress to pass IPQs. IPQs confer more benefits, and far greater market power, to crab processors than pollock processors received under the AFA. Under the AFA Congress created a closed class of inshore processing *facilities* and linked the set aside of a coop's fish to an agreement to deliver 90 percent of a coop's harvest to a particular processing facility. But Congress did not guarantee the owner of each facility in the closed class a particular share of the inshore pollock harvest, nor did they force the fishermen to join the coops if they chose not to. In addition, each coop could deliver 10 percent of their collective harvest to another inshore processing facility, which means that each coop has the ability to let one or more boats transfer and take their history to another processor if they so choose.

Under the Council's IPQ plan each processing *company* is guaranteed a particular share of the crab harvest, which means that company can consolidate processing facilities and has no risk of losing market share if they don't compete on price and terms. Further, each fisherman must deliver 90 percent of their catch to a company with IPQs, which makes delivery of the remaining 10 percent to a different processing company economically and practically infeasible. A more detailed summary of four key differences between the AFA and the Council's IPQ proposal prepared by Dr. Robert Halverson of the University of Washington is also attached to my testimony.

What is particularly troubling about this proposal is that neither the Council nor the State has ever provided any justification for the proposal other than that certain processors demanded it. IPQs are not used anywhere in the world. Dr. Scott Matulich of Washington State University is the only academic who has supported the IPQ proposal. He has promoted IPQs as the only way to ensure that all parties—processors, fishermen, and communities—benefit from rationalization of a fishery. The reality is that IPQs benefit only one party—the processors—at the expense of fishermen and communities.

Independent reviews of Dr. Matulich's work and the Council proposal have failed to find merit in the IPQ concept and have demonstrated the harm they are likely to cause. The National Academy of Sciences considered IPQs as part of their comprehensive review of individual fishing quota plans and recommended the use of other methods—for example allocating individual fishing quotas to processors, which the Council plan does already—instead of IPQs. The Council's own independent analysis by Drs. Milon and Hamilton of the University of Central Florida found that crab IPQs were anti-competitive and would have adverse impacts on fishermen. Independent reviews of Dr. Matulich's work by the General Accounting Office and Dr. Robert Halvorsen of the University of Washington have concluded that the analysis done by Dr. Matulich for the State of Alaska used a flawed methodology and cannot be validated. Yet the Council persists in pushing IPQs as necessary for crab rationalization to occur.

Congress does not lightly create monopoly markets. When Congress does, they create regulatory commissions to oversee those monopolies, complete with investigative authority and detailed enforcement powers, in order to protect the public from the adverse economic impacts of those monopolies. None of those safeguards are included in the Council proposal. The binding arbitration provision is enforced, if at all, through private contract. The right of first refusal offered to protect communities is ephemeral at best—the reality is that no community could ever expect to meet the conditions the Council has set. There is no appeal to a government agency if problems arise. The Council plan makes no provision for oversight and enforcement by the Secretary of Commerce or any other government agency. The Council has neither the expertise nor the legal ability to oversee the monopoly market structures they are asking Congress to create in the name of fishery management. Anti-

trust remedies would simply not exist, because Congress will have legislatively created these monopolies.

The simple truth is that IPQs are nothing more than economic allocation of markets. They are a ransom that processors are demanding before they will allow the crab fishery to be rationalized to improve conservation and fishing safety. There is no fishery management or community protection justification for IPQs. In fact, IPQs are precisely what National Standard 5 of the Magnuson-Stevens Act expressly prohibits they are a measure that has economic allocation as its SOLE purpose.

Congress needs to realize that the push for IPQs will not stop with crab. The Council is already considering plans to rationalize the Gulf of Alaska groundfish fisheries, and some Gulf of Alaska fish processors are demanding that IPQs be included. Further, a recent report on the crisis in the salmon fisheries suggested that IPQs may be needed for the salmon fisheries. Congress has already passed special legislation for pollock, and is being asked again to pass special legislation for crab. If Congress authorizes crab IPQs, the floodgates will be open and Congress will be besieged with requests for special legislation for each fishery off Alaska. Having Congress legislate fishery by fishery is precisely what the Magnuson-Stevens Act was designed to prevent.

IPQs have dominated the Council's discussion of much needed individual fishing quota proposals for far too long. Congress needs to send a clear message that IPQs will not be allowed. Once that message is delivered it will be easy for the Council to quickly implement an individual fishing quota program under its existing authority that will address the legitimate concerns of fishermen, communities, and processors.

Thank you for the opportunity to present this testimony. I would be happy to answer any questions at the hearing, and ask that the hearing record be kept open for ten business days so that the City of Kodiak may submit additional information in support of our testimony.

Attachments: Estimation of Losses to the Kodiak Community
Major Differences Between the AFA and the Council's IPQ Plan

ATTACHMENT

Estimation of Losses to the Kodiak Community from Bristol Bay Red King Crab Rationalization

During the past several years a number of Kodiak crab fishermen have delivered their Bristol Bay red king crab to Kodiak rather than a port closer to the grounds. This is due to a number of factors including investments some have made in a local processor, responses to higher prices offered in Kodiak and relationships with local processors.

Under the NPFMC proposed crab rationalization program, crab processors will be granted a processing quota based on their activity during 1998–9. Harvesters will be granted corresponding quota of which 90 percent ("A" shares) must be delivered to processors holding processing quota and the remaining 10 percent ("B" shares) may be delivered to any processor. Analysis of the rationalization program suggests that the "B" quota deliverable to any processor will initially equal about 12.9 percent of each independent (*i.e.*, non-processor controlled) harvester's allocation.

The impact of the reduction in deliveries to Kodiak can be estimated based on information provided by NPFMC. The following table lists the landings and value to Kodiak, overall landings, and the estimated impacts to the Kodiak community *based on first sale of processed products*.

Year	2000	2001	Based on 1999	Based on 1990
Kodiak BBRKC deliveries (lb)	824,780	817,916		
Overall BBRKC harvest (lb)	7,546,145	7,786,420	11,000,000	20,000,000
Kodiak percentage	10.93%	10.50%	10.72%	10.72%
3.8% of total harvest "A" share harvest	258,078	266,296	376,200	684,000
3.8% plus 12.9 percent of "A" shares (IQ)	291,370	300,648	424,730	772,236
Difference between actual (projected) and IQ	533,410	517,268	754,152	1,371,185
Ex-vessel prices	\$4.80	\$4.92	\$4.86	\$4.86
Converted to first wholesale product value	\$5.48	\$5.60	\$5.54	\$5.54
Difference in value processed products	\$2,921,379	\$2,895,047	\$4,175,587	\$7,591,977
Community weighted average multiplier	1.232	1.232	1.232	1.232
Foregone community multiplied impact	\$3,599,138	\$3,566,698	\$5,144,324	\$9,353,316
Total Kodiak deliveries (\$ million) all species	94.5	80.5	87.86	88.82
Difference % of total deliveries	2.709%	3.161%	4.172%	7.503%
Total fisheries taxes	\$1,287,344	\$796,393	\$1,041,869	\$1,041,869
Fisheries taxes on difference	\$34,879	\$25,177	\$43,464	\$78,167
<i>Total Effect (Wholesale + Multiplier + Taxes)</i>	<i>\$3,634,017</i>	<i>\$3,591,876</i>	<i>\$5,187,788</i>	<i>\$9,431,483</i>

In 2000, 824,780 lbs of Bristol Bay red king crab were delivered to Kodiak from a total harvest of 7,546,145 lbs. This represents 10.93 percent of the total harvest. Kodiak processors will receive only 3.8 percent of the processor IQs (which are 90 percent of the total harvest) which would have translated into 258,078 lbs of deliveries in 2000. In addition, harvesters making those deliveries would have received 12.9 percent of that amount in non-processor specific IFQs. If this amount is also assumed to be delivered to Kodiak a total of 291,370 lbs would have been delivered in 2000—a difference of 533,410 lbs less than actual deliveries. The fishery average ex-vessel price was \$4.80 per pound in 2000. The round weight equivalent average difference between ex-vessel and wholesale product value is \$0.6867 per lb for a wholesale price of \$5.48/lb. This results in potential product loss of \$2,921,379 to processors. The best available economic multiplier for Kodiak is 1.232 or a local increase of 23.2 percent for every new dollar into the community. Total deliveries to Kodiak in 2000 from all fisheries were valued at \$94.5 million. The proposed loss in BB red king crab deliveries would amount to 2.709 percent of the total. Kodiak collected \$1,287,344 in fisheries landing and business taxes for 2000 landings. The straight percentage of that simply allocated to the crab difference is a loss of \$34,879. This calculated total loss to the community of Kodiak from regulatorily prohibited Bristol Bay red king crab is \$3,634,017. For 2001 the same calculation estimates a loss due to processor restrictions of \$3,591,876.

The same calculation can be used to estimate loss to the Kodiak community when crab harvest levels increase from current low levels. In 1999, 11,090,930 lbs of Bristol Bay red king crab were harvested overall and in 1990 20,362,342 pounds were harvested. Rounding these numbers to the nearest million pounds and projecting the 2000/2001 averages for other variables (Kodiak percentage of landings, ex-vessel price, conversion to wholesale price, total Kodiak deliveries, and total taxes modified only by the increase in crab landings) allows derivation of losses to Kodiak. As the amount of crab harvest increases its relative importance to the Kodiak economy likewise increases. For instance, recent delivery percentages applied to 1990 crab harvest levels suggest that Bristol Bay red king crab would contribute over 7.5 percent of the total value of deliveries of all species to Kodiak. Restrictive processor quotas applied to the 1990 harvest would cause an annual loss of \$9.4 million to the Kodiak community.

Background

When product is prohibited from delivery to a community the result is an economic loss not only to the persons buying the product for further processing but also to the community as a whole. Since the local industry is not able to manufacture processed product it is not able to employ workers or to purchase other local goods and services required in the manufacturing process. In turn, there are lower wages and profits throughout the community due to economic multiplier effects. This analysis derives these cumulative impacts based on readily available information. Since the restrictions on trade due to crab processor quotas can only be estimated, and since market trends have shown increased economic crab processing activity in Kodiak in recent years, these estimates are viewed as conservative and at the lower end of probable impacts.

Estimating the economic impact to the Kodiak economy from reduced king crab deliveries must be based on processed product value. Processed product value is derivable from deliveries and comparison between ex-vessel and processed product prices.

Fishery purchases by Kodiak processors have decreased dramatically, both in terms of volume and value, during the past few years. This is related to changing ocean conditions, changing world markets, and regulatory changes designed to protect Seller sea lions.

Recent deliveries to Kodiak

Accurate data for 2002 deliveries are not yet available from A. However, the change between 1997 and 2001 is illustrative. Both overall landings at Kodiak and ex-vessel value of all species combined are similar between 1997 and 2001. However, the relative importance of species, such as Bristol Bay red king crab, have changed. Red king crab changed from 0.1 percent of overall landings and 1.5 percent of overall value in 1998 to 0.3 percent of overall landings and 4.8 percent of overall value in 2001.

Ex-Vessel Landings of Seafood at Kodiak, 1997–2001

[Millions of Pounds]

Species	1997	1998	1999	2000	2001
Bristol Bay King Crab	0.4 (0.1%)	0.3 (0.1%)	0.5 (0.2%)	0.9 (0.3%)	0.8 (0.3%)
Total Crab	1.1	1.2	1.4	2.7	1.4
Pollock	83.3	165.8	130.5	102.2	90.8
Pacific Cod	73.1	72.0	85.0	64.9	54.7
Total Groundfish	184.2	263.4	237.6	200.4	176.3
Salmon	57.8	105.6	70.5	61.8	78.8
Halibut	11.0	9.1	9.9	9.3	8.5
Sablefish	3.9	3.6	3.2	3.4	2.2
Other Species	8.7	5.7	4.1	3.3	3.3
Total All Species	267.0	388.6	326.7	281.0	270.5

Source: McDowell Group. 2002. Analysis of Economic Impacts From Fishing Restrictions on the Kodiak Island Borough Economy. Prepared for Kodiak Island Borough. November 2002. Table 11.

Ex-Vessel Landings of Seafood at Kodiak, 1997–2001

[Millions of Dollars]

Species	1997	1998	1999	2000	2001
Bristol Bay King Crab	\$1.3 (1.6%)	\$1.2 (1.5%)	\$1.7 (1.6%)	\$1.7 (1.8%)	\$3.9 (4.8%)
Total Crab	3.1	2.0	2.8	3.4	4.9
Pollock	8.1	11.6	13.1	8.7	12.7
Pacific Cod	15.5	13.7	25.5	24.0	15.9
Total Groundfish	27.8	28.6	41.2	36.8	32.5
Salmon	18.8	29.8	31.1	21.5	18.8
Halibut	21.0	10.0	20.6	23.1	16.2
Sablefish	8.0	5.2	5.7	7.0	6.9
Other Species	4.2	3.7	2.7	2.7	1.2
Total All Species	\$82.9	\$79.3	\$103.9	\$94.5	\$80.5

Source: McDowell Group. 2002. Analysis of Economic Impacts From Fishing Restrictions on the Kodiak Island Borough Economy. Prepared for Kodiak Island Borough. November 2002. Table 12.

Total Bristol Bay red king crab harvests and Kodiak deliveries for 2000 and 2001 are available from ADF&G.¹ In 2000, 10.93 percent of the Bristol Bay red king crab were delivered to Kodiak and in 2001, 10.5 percent were delivered there. Kodiak processors are expected to be allocated slightly less than 3.8 percent of the Bristol Bay red king crab IPQ.²

Deliveries to Kodiak under crab rationalization

Thirty-one red king crab harvest vessels are reported to be affiliated with processors.³ This represents 12.1 percent of the total 256 harvest vessels which qualify.⁴ The cumulative quota due these 31 vessels amounts to 12.6 percent of the red king crab IFQ. Using the data from the analysis, a maximum of 225 vessels will be eligible to receive the “B” shares. This number is likely to be lower since there continues to be consolidation in the harvesting fleet. This consolidation will only become greater under the proposed buyout program. Likewise, “control”, when defined, will be more restrictive than the 10 percent ownership “affiliation” criteria used in the NPFMC analysis.

¹ Fishery Information Packet for the Bristol Bay Red King Crab Fishery, 2002. ADF&G RIR 4K02–45. Kodiak data—NMFS data as presented at <http://www.kodiak.org/seafood.html>.

² Communication from NPFMC staff Dr. Mark Fina. Includes one additional processor for confidentiality reasons.

³ North Pacific Fishery Management Council (NPFMC). 2002. Bering Sea Crab Rationalization Program Alternatives: Public Review Draft. May, 2002. Table 3.4-27.

⁴ NPFMC, 2002. Table A3-32.

Supposing for this analysis that the percentages listed above are correct, the independent harvesters will control 86.4 percent of the “A” shares (77.76 percent of all IFQs) and all 10 percent of the “B” shares. Therefore, each independent harvester will receive “B” shares in an amount equal to 12.9 percent of their “A” shares (rather than 11.1 percent if all harvesters received “B” shares). Conversely, these “B” shares will equal 11.6 percent of their total annual harvest allocation (rather than 10 percent).

In order to simplify the analysis of probable loss to Kodiak, it is assumed that the full 3.8 percent of the overall “A” share harvest would be delivered to Kodiak along with the “B” share deliveries associated with that IQ (an additional 12.9 percent of the “A” shares). This equates to 3.86 percent of the overall harvest. The difference between deliveries and the percentage that would be allocated to Kodiak processors in 2000 and 2001 is calculated at 533,410 lbs and 517,268 lbs, respectively.

Wholesale processed product value

In order to calculate the economic impacts of reductions in processed crab to the Kodiak economy, it is first necessary to determine the value of crab and how that value relates to ex vessel value. The following table derives the difference of crab value between first sale of wholesale product (sections) and ex-vessel value. Shellfish sections represent 98 percent or more of the processed product type for red king crab from 1996–2000.⁵ Therefore, the first wholesale crab prices for shellfish sections is used as a proxy for all first wholesale prices. In order to convert wholesale prices into equivalent delivered prices it is necessary to multiply by the product recovery rate. In this case, a product recovery rate of 60 percent is used.⁶ Comparing these back cast, delivered wholesale prices to actual ex-vessel prices allows a difference or processor markup to be determined. This difference varies year to year but an average of the five most recent years available is \$0.6768 per pound delivered weight.

	Wholesale 1st Sale (Sections) \$/lb	Backcast Delivered (Whole) \$/lb	Actual Weighted Ex-Vessel \$/lb	Difference \$/lb
1996	\$ 8.53	\$5.12	\$4.01	\$1.11
1997	\$ 6.15	\$3.69	\$3.26	\$0.43
1998	\$ 5.52	\$3.31	\$2.61	\$0.70
1999	\$11.25	\$6.75	\$6.26	\$0.49
2000	\$ 9.11	\$5.47	\$4.81	\$0.66
Average				\$0.6768

Sources: First wholesale crab price—NPFMC, 2002, Appendix 2-3, Table 1. Conversion ratio of 60 percent for whole fresh crab to sections—Crapo, 1988. Ex-vessel average price—NPFMC, 2002, Table 2.5-1.

The reported average ex-vessel prices for BB king crab in 2000 and 2001 are \$4.80 and \$4.92, respectively.⁷ Converting these to processed sections and back calculating a wholesale price results in estimates of \$5.48 per delivered pound at the wholesale level for 2000 and \$5.60 per pound for 2001. Based on these estimated processed product values, the foregone value at the first wholesale level would have been \$2,921,379 in 2000 and \$2,895,047 in 2001.

Economic multiplier impacts

Gross revenue received from the sale of processed crab at the first wholesale level, is termed a direct effect (output value). In addition to these direct effects of revenue, a community also incurs indirect and induced effects from the sale of crab. “Indirect effects are changes that occur because producers change the amounts of goods and services they purchase, such as raw fish, fuel, utilities and packaging supplies. Induced effects are generated as income from direct and indirect expenditures work their way through the economy. An example of an induced effect would be a reduction in restaurant sales as processing plant workers choose to cut back on personal expenditures. . . . [I]t is assumed that there is an overall U.S. multiplier of 2.0 for all direct effects—with indirect and induced effects that accrue either inside the local economy or leak out to non-local economies. In other words, it is assumed that

⁵ NPFMC, 2002, Appendix 2-3, Table 2.

⁶ Chuck Crapo, Brian Paust, and Jerry Babbitt. 1988. *Recoveries and Yields from Pacific Fish and Shellfish*. Alaska Sea Grant, Marine Advisory Bulletin No. 37. King crab, raw-whole, converted to cooked sections.

⁷ ADF&G data by year <http://www.cf.adfg.state.ak.us/geninfo/shellfish/shelhome.htm#catch>

for every dollar of direct output effect, there is an additional dollar of indirect and induced effects that is generated somewhere in the U.S. economy.”⁸

The most recent estimate of community wide economic impacts for Kodiak Island are a weighted average aggregate multiplier of 1.232. This compares to similarly derived multipliers of 1.185 for the Aleutians West Census area and 1.085 for the Aleutians East Borough.⁹ Applying this economic multiplier to the potential value of foregone wholesale processed product results in a cumulative impact of \$3,599,379 for 2000 and \$3,566,698 for 2001.

Local fisheries taxes

Taxes are derived directly from the fishing industry both via a shared landing tax and a fisheries business tax. A simplified method is used to determine the amount related to a difference in crab landings. Total landing and fisheries business taxes for Kodiak are reported as \$1,287,344 in 2000 and \$796,393 in 2001.¹⁰ Total landings for all seafood products in Kodiak during the same two years were valued at \$94.5 million and \$80.5 million, respectively.¹¹ The potential loss in ex-vessel value is calculated at 2.709 percent of the overall landings for 2001 or \$34,879. The same calculation for 2001 results in a potential loss of \$25,177.

There are other taxes and municipal income associated with crab processing and with indirect and induced economic activity that are not accounted for in this analysis. For instance, reduced processing and the concomitant reductions in purchases and spending result in lower overall sales tax revenues.¹²

Cumulative potential impacts to Kodiak, 2000 and 2001

The estimated total effects of prohibiting crab deliveries to Kodiak processors includes, at a minimum, the loss of wholesale product, multiplied community impacts, and foregone taxes. The estimated potential minimum impacts for 2000 and 2001 are thereby calculated at \$3,634,017 for 2000 and \$3,591,876 for 2001.

Cumulative impact to Kodiak based on historic crab harvest levels

The Bristol Bay red king crab harvests in 2000 and 2001 were at the low end of recent harvests. There was no fishery at all during 1983, 1994 and 1995. The only years during the past three decades when the harvest was lower than 2000/2001 was in 1982, 1984, 1985, and 1988. During the past three decades, harvests have ranged from 4.2 million pounds to 130 million pounds.¹³ The harvests from 1990 through 2002 have averaged 11.6 million pounds.

In order to arrive at a more realistic expectation of economic losses to the Kodiak community under crab rationalization it is illustrative to analyze recent delivery rates compared to crab rationalization restrictions using examples from the last ten years of harvest. In order to make the analysis within current trends, the projection uses several simplifications. Overall Bristol Bay red king crab harvests are rounded off to 11 million and 20 million pounds as proxies for actual harvests in 1999 (11,090,930 pounds) and 1990 (20,362,342 pounds). The average harvest delivery percentage to Kodiak from 2000 and 2001, 10.72 percent, is used to compare to restricted deliveries under crab rationalization. The average ex-vessel value from 2000/2001 of \$4.86 is used to derive a first wholesale back calculated price of \$5.54 per delivered pound. Likewise, total deliveries to Kodiak are assumed to be the same as average in 2000/2001 except for the increase in deliveries that would be made to Kodiak due to the increased crab harvest. Total taxes are under-estimated at the average of 2000 and 2001.

The analysis projects that an 11 million pound crab harvest with processor quotas would result in a loss to the community of Kodiak of \$5,187,788 million. A harvest of 20 million pounds, based on that experienced in 1990, would result in a loss to Kodiak of \$9,431,483 million. The losses would represent 4.172 percent and 7.503 percent of overall value of landings to the community, respectively.

These calculations are, at best, conservative estimates. They derive expected losses based on actual deliveries to Kodiak during 2000 and 2001 compared to pro-

⁸Northern Economics. 2001. Assessment of Economic Impacts of Federal Actions to Protect Steller Sea Lions on Alaska Groundfish Fishery Participants. Prepared for Southwest Alaska Municipal Conference, August 2001. Section 8.4.

⁹Estimated using IMPLAN impact analysis software by Northern Economics, 2001.

¹⁰McDowell Group. 2002. Analysis of Economic Impacts From Fishing Restrictions on the Kodiak Island Borough Economy. Prepared for Kodiak Island Borough. November 2002. Table 17.

¹¹McDowell Group. 2002. Table 17.

¹²The City of Kodiak currently has a 6 percent sales tax.

¹³Harvests of 3 million pounds in 1982, 4.2 million pounds in 1984 and 1985, and 7.4 million pounds in 1988. Fishery Information Packet for the Bristol Bay Red King Crab Fishery, 2002. Table 1.

jected deliveries. However, the expected deliveries are likely to be even less than used in this analysis and therefore the impacts greater. For example, processors are free to transfer processing quota between processing plants. It is entirely possible that processors with larger plants in Unalaska/Dutch Harbor would direct deliveries to those plants at the expense of deliveries to Kodiak. Likewise, vessels that are “controlled” by processors, such as several fishermen who have investments in both crab harvesters and a processor at Kodiak, would not receive “B” harvest shares and therefore crab deliveries to Kodiak would decrease accordingly.

MAJOR DIFFERENCES BETWEEN AFA INSHORE COOPERATIVES AND THE COUNCIL’S
PROPOSED RATIONALIZATION PROGRAM FOR THE BSAI CRAB FISHERIES

Robert Halvorsen, Professor of Economics, Department of Economics,
University of Washington Seattle, Washington

I. Protection of Processors’ Market Shares

Under the proposed rationalization program for the crab fisheries, a processor would receive processor quota share equal to 90 percent of its historic processing share. This amount would be guaranteed to the processor because harvesters could deliver their Class A allocation only to processors holding processing share. Therefore the only way that a processor could lose more than 10 percent of its historic market share would be if it set the ex vessel price so low that vessels would prefer to forego fishing rather than deliver fish to it, because that would be their only alternative.

Under the AFA, each processor has the right to process 90 percent of its cooperative’s total harvest, but this does not guarantee that it will receive 90 percent of its historic processing share, because vessels have alternatives to remaining in the cooperative. One alternative for a vessel is to fish in the open access portion of the fishery and deliver its fish to another processor. It could then either remain in open access or join the cooperative of that processor. Another option is to qualify for another cooperative without going through open access by delivering its fish to the alternative processor as part of the 10 percent of the cooperative’s total harvest that can be delivered to any processor. And if enough vessels defected, the cooperative itself might be dissolved, eliminating any processing rights under the AFA.

Therefore protection of processors’ market shares would be much greater under the proposed program for the crab fisheries than under the AFA, thereby giving the processors much greater bargaining power. In particular, under the AFA a processor will retain market share only if it offers an ex vessel price that is competitive with the price being offered by other processors, whereas under processor quota shares a processor could retain 90 percent of its market share even if it offered a price just slightly higher than the cost of catching fish.

II. Regionalization

Under the proposed rationalization program for the crab fisheries, Class A harvest shares and processor shares for each crab fishery would be regionally designated, whereas under the AFA the entire inshore sector is treated as a single region. This difference has important implications both for the net economic benefits that can be realized from rationalization and for the distributional consequences of rationalization.

The Council itself recognizes that regionalization reduces net economic benefits by restricting consolidation of activities that are desirable for reducing capacity and gaining efficiency in both the harvesting and processing sectors under rationalization (Report to Congress August 2002, page 18). The lack of such constraints under the AFA increased the total net economic benefits that were available to be shared by harvesters and processors.

Regionalization also has implications for the distributional consequences of rationalization because it subdivides the markets for crab and thereby increases the already high degree of concentration among processors. It also creates an incentive for processors to consolidate their market shares on a regional basis, which would increase the degree of concentration still more. The greater bargaining power attained by processors can be expected to adversely affect the price received by harvesters for Class B allocations as well as for Class A allocations, both because it might be difficult logistically to deliver to different markets and because processors might be able to require bundling deliveries of the two classes of fish.

III. Complexity

The “three-pie voluntary cooperative program” being recommended for the crab fisheries is much more complex than the rationalization program implemented

under the AFA. The greater complexity can be expected to have serious negative consequences both with respect to the cost of management and with respect to the functioning of the market for fish and for quota shares.

Implementation of the proposed rationalization program for the crab fisheries would require the determination of share allocations in each region of each fishery for each individual vessel and processor. Ongoing management measures would include annual monitoring and enforcement measures at the same level of detail. Eventual formation of voluntary cooperatives might reduce some of the management costs with respect to harvesting, but the extra costs of managing processing activities would continue.

More importantly, the increased complexity of the system might make the determination of prices through a decentralized market structure impracticable. For each regional market in each fishery the prices that would have to be determined include the ex vessel price of Class A fish, the ex vessel price of Class B fish, the price of Class A harvesting quota, the price of Class B harvesting quota, and the price of processing quota.

Attaining equilibrium prices in such a complex system would be difficult in even in large, well-functioning, markets, and the markets in the crab fisheries would be both thin and imperfectly competitive. In addition, the large fluctuations in total allowable catch would complicate the determination of equilibrium prices and hinder the ability of the system to converge to stable values. In recognition of the possibility of the price system breaking down, the rationalization plan includes a binding arbitration program. However, the necessity of such a procedure increases the cost of managing the fisheries under the proposed rationalization plan, and even a well-designed arbitration procedure is not an adequate substitute for a well-functioning market.

IV. Net Benefits from Rationalization

Rationalization of the pollock fishery under the AFA created large net economic benefits for the inshore sector, which made it feasible for both the harvesting and processing sectors to benefit from the program. As already noted, the regionalization requirement under the proposed plan for the crab fisheries would decrease the potential net economic benefits to be obtained by rationalization. But even if this provision did not exist, the total net economic benefits of rationalization in the crab fisheries could not be expected to be as large as they were under the AFA, because participants in the inshore pollock fishery benefited both from a large increase in the sector's total allocation and from large rationalization benefits from the formation of cooperatives.

The sector's total allocation was increased first by an increase in its share of the total directed pollock fishery from 35 percent to 50 percent, and subsequently by an increase in the total allowable catch for the pollock fishery. The combined result was that the inshore sector's total allocation has increased by 80 percent from the pre-AFA level in 1998 to the present.

Large efficiency benefits were realized from the formation of the AFA cooperatives. Rationalization under the AFA permitted improved targeting of pollock during the peak roe season, resulting in greatly increased ex vessel prices during this season. The value of output was also increased because slowing the race for fish permitted an increase in the recovery rate and a shift to higher valued products. Harvesting costs have been reduced by the transfer of quota shares from less efficient vessels to more efficient vessels, and easy transferability of allocation within a cooperative has facilitated the full harvesting of the available allocations.

In contrast, the proposed rationalization program for the crab fisheries does not include an increase in the total allocations available to these fisheries. It does incorporate a buyback program, but the efficacy of the buyback program has yet to be determined, and in any case could not result in benefits equivalent to the 80 percent increase in total allocation experienced by the inshore pollock fishery. Similarly, increases in the value of output due to rationalization are not anticipated to be as large for the crab fisheries, and increases in harvesting efficiency are likely to be hindered by the restrictions imposed by the proposed program.

Senator STEVENS. Yes, we can keep the record open for 10 days. We are going on recess on Friday, so that would be—we should make that so it would be a week from the coming—not the coming Monday. I forget the date that will be, but that is the date we will come back into session. That would be the date we will close the record.

Ms. FREED. Thank you.

Senator STEVENS. The second of June.

Ms. FREED. Thank you.

Senator STEVENS. Thank you very much.

Our next witness is Dave Fraser, Captain of the fishing vessel Muir Milach.

**STATEMENT OF DAVE FRASER, CAPTAIN,
FISHING VESSEL MUIR MILACH**

Mr. FRASER. Thank you, Mr. Chairman, Members of the Committee. I appreciate the opportunity to testify on behalf of the Crab Rationalization and Buyback Group.

The Crab Group represents over 100 crab vessels, and the Crab Group strongly supports rationalization of the Bering Sea and Aleutian Island crab fisheries. We agree that the status quo system has left harvesters on the brink of bankruptcy, it has led to the demise of most of the non-AFA crab processors already, and it is also, and worst of all, been a murderous management system. We lose, on average, five fishermen a year. And that is clearly unacceptable, and we need to move forward into a rationalized fishery.

That said, Mr. Chairman, the Council has recommended to you two distinct programs, one of which is a crab-management program that manages the harvest of crab. It includes skipper and crew provisions. It includes CDQ provisions, regionalization, a number of other protections for processors inherent in the program. But separate from that, they have recommended to you a different program. It is one to manage markets, manage the marketplace for crab and the sale of crab. And that is what requires congressional authorization. That is the program to which the Crab Group objects.

Mr. Chairman, after the June meeting, I went home and was explaining to my neighbor, who is a plumber, what the Council had recommended, and just started out at the very basics and explained that they were recommending a program that divided up the right to buy crab from fishermen and assign each processor, or actually a small handful of processors, specific amounts of crab they could buy. He interrupted me after about 30 seconds and said, "Well, you are going to get paid less for your crab that way, are not you?" Now, neither Harold, my neighbor, nor I are economists, but I think he is right.

In 1996, Mr. Chairman, you, in reauthorizing the Magnuson-Stevens Act, asked for advice, and you did not ask for it from a plumber or me; you asked for it from the National Academy of Sciences. The National Academy of Sciences spent a long time preparing its advice, and they looked specifically, on the basis of your direction, at crab processing quotas, or at processing quotas. And they said, quote, "We find no compelling reason for establishing a separate processor quota system."

Mr. Chairman, the Council, at your direction, was also, as you pointed out at the beginning of this session, asked to analyze the impacts of processor quotas in looking at crab rationalization. Now, the Council staff new a hot potato when they were handed one, and they contracted out that portion of the crab rationalization analysis to two independent economists from Florida. Those economists said, quote, under a processor quota system, "processors will do

better and harvesters will do worse as the ratio of A to B shares increases.”

Now, that did not go over real well, and the Council took that out of the analysis and put it in an appendix, but that was the only analysis done on the impact of processor quotas; and the rest of the document was about four pages out of several hundred pages devoted to the issue of processor-quota impacts.

Mr. Chairman, when the Council got to June and made its recommendation, it did not have any analysis of the impacts of processor quota before it, and it did not make any motions to consider any other alternatives, such as 50–50 or 70–30 or anything other than 90–10 split on processing quotas. The argument—there was no debate over this, but the argument essentially boils down to, “It is our way or no way.” Processor quotas must be included or processors will block rationalization of the crab fishery and these lives will be held hostage.

What the economists that were contracted by the Council described as “monopsony ex-vessel pricing,” I described as a game of musical chairs. If you, as a fisherman, are unhappy in the situation you are in with a processor and want to move to a different processor, under an IPQ system you have got to move somebody else out of their chair, and they have to agree to go to someplace else. The only other open chair is the one you left that you found intolerable.

Now, Commissioner Duffy has suggested that 10 percent B shares, open-market shares, are enough to correct the problem, and he has also equated that, and others have equated that, to the 10 percent rule in the AFA. I think it is absolutely critical that you realize the essential difference between the AFA, which is an excellent program, and the IPQ program for crab, which is not. And that is the under the AFA, you do have stability. Processors have a planning horizon. They contract with members of their coop on an annual basis. But it is not musical chairs. If a harvester chooses to move to another processor by going through a year of open access, he can do so and take his chair with him. No processor under the AFA is guaranteed any fixed amount of quota from year to year. And that is what keeps the marketplace honest. It is the element of competition.

Mr. Chairman, the Council did recognize the impacts of processor quota and what it would do to a competitive marketplace. And as a result, in recognizing that, they initiated a couple of trailing amendments. Those were to deal with community protections and the binding arbitration program. As Ms. Freed has suggested, the community-protections element ended up being—ephemeral, I think that was the word she used, or a sham. Likewise, the binding-arbitration provisions were the only basis on which some harvesters were willing to swallow the idea of processing quota.

The Council set up a committee. It worked for several months, came back with two models, one of which was supported by processors, the other by harvesters. And the bottom line, Mr. Chairman, is that the Council, on a 6–5 vote, chose the one that the processors favored and rejected the one that the harvesters favored. And after that meeting, every single group of crab harvesters has expressed the fact that the binding arbitration model chosen by the

Council will not provide a meaningful safety net or the assurance of an outside option that equates to a competitive marketplace.

Now, Mr. Chairman, Arni will testify later. They believe that this can be corrected, and will be corrected, but they are the only group that is taking that position at this point in time.

So binding arbitration has not fixed the problem of destroying a competitive marketplace, and it becomes a tar baby. Arni will be asking for continual oversight by Council and Congress of the binding-arbitration process. Unless you write them a blank check, that means the Council has to come back to Congress for more authority if they want a different kind of binding arbitration than the one currently proposed.

If Congress authorizes IPQs and gives broad authorization for changes in binding arbitration, it will transform the Council's task from managing fisheries to managing markets, and they will need to invest the Council with the powers and experiences of the National Labor Relations Board, the Federal Trade Commission, Department of Justice Antitrust Division, and Public Utility Regulatory Commissions.

It is a tar baby, Mr. Chairman, and I think it is a path Congress should think very seriously about going down, because the changes that will occur while attempting to fix the impacts from a flawed system are going to be irreversible changes. You cannot put Humpty-Dumpty back together again.

Mr. Chairman, I suggested at the beginning that the Council's program, absent processing quota shares, already does include elements to protect processors. We do not disagree with the need for protection of processors under a rationalized fishery, but some of the elements that are already embedded in the program for processors are separate classes of quota for catcher vessels and catcher processors so that catcher vessels cannot start processing their own catch; they have to use existing processors. There is regional restrictions on deliveries. Processors are allowed to acquire and own harvest quota; and, in fact, a processing company is allowed to hold five times as much harvest quota as any individual harvesting company is allowed to hold. That limitation for harvesters of only 1 percent, versus the processors' 5 percent, means that there will be a diverse supply on the harvest side for processors.

Mr. Chairman, I think that the AFA provides a workable alternative to PQs, but the AFA is not equivalent to processor quotas. Congress should reject the Council's request for a radical expansion of its duties beyond fisheries management and into market regulation represented by the request for authorization to adopt the processor-quota element. If Congress does, in fact, authorize processor quotas, it is critical to do so in a manner that guarantees improved community protections and a better binding-arbitration system, and that those elements are done first.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fraser follows:]

PREPARED STATEMENT OF DAVID FRASER, CAPTAIN, FV MUIR MILACH,
CRAB RATIONALIZATION AND BUYBACK GROUP

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Executive Summary

The CRAB Group supports rationalizing the Bering Sea/Aleutians Islands crab fisheries. The status quo system has left harvesters on or over the brink of bankruptcy, and has led to the demise of most of the non-AFA (American Fisheries Act) crab processors. Worst of all, the murderous “race for fish” in the middle of winter kills an average of five fishermen a year. We are also aware that asking Congress to overrule a unanimous Council request puts us in a difficult position.

However, we believe a fair rationalization program can be developed without resorting to Processor Quotas (PQs). Processor quotas will result in a segmented monopoly and require endless government regulatory involvement to simulate a competitive market.

It is the position of the CRAB Group and hundreds of others that Congress should reject the Council’s request for a radical expansion of its authority.

The harvester component of the crab rationalization program is legal now. It can be adopted together with the CDQ provisions, the regionalization provisions, and the skipper and crew provisions designed by the Council, but without PQs.

IFQs allocate access to a share of a public resource, which becomes private property only after it is captured. PQs grant a right or privilege to process a fixed portion of the harvest. Thus PQs direct the disposition of private property, rather than a public resource.

IFQs insure that public resources are harvested in a safe and efficient manner. PQs eliminate or restrain competition among processors and create a regulated marketplace which requires creating a substitute mechanism for price formation.

The crab rationalization process included nearly two years of committee meetings in which the various elements were crafted. Both harvesters and processors participated in these meetings. Throughout this process, the processing sector was adamant that rationalization was not going forward without processor quota. In the end all the arguments for PQ come down to this: "Our way, or no way."

The Council spent three days debating nearly all the proposed elements. In the end it created a balanced harvester IFQ system with regional delivery requirements, skipper and crew provisions, and a balance of recent and historic participation credit.

However during this time, not a single motion was made regarding the allocation of 90 percent or the procession rights. There was no debate regarding the impacts of creating this system in spite of considerable testimony opposing processor quota shares.

It is our firm belief that an effective lobbying effort cannot substitute for building a low cost and effective rationalization program within the current framework of the Magnuson-Stevens Fisheries Management and Conservation Act.

National Academy of Science Recommendations

Congress should heed the advice it requested from the National Academy of Science. In the NAS report, "Sharing the Fish," they said there was no:

"... compelling reason to establish a separate, complementary processor quota system (the "two-pie" system)."

It also noted with regard to foreign ownership:

"If there is a consistent congressional policy, it can be characterized as resistance to foreign ownership of fishing vessels and foreign exploitation of fish resources with the U.S."

The heart of the controversy over PQs is the impact on price formation. PQs destroy the harvesters' ability to benefit from collective bargaining under the 1934 Fishermen's Marketing Act.

Ninety percent of a harvester's crab must be delivered to a processor holding unused PQ. The result is a game of musical chairs which encourages harvesters to accept a sub-optimal price to avoid being the last one standing. In order to change processors, a harvester must find a new chair. Such harvesters *must* sell at a lower price than the person they are displacing in order to buy this chair. Clearly this creates a downward price spiral.

Issuance of PQs divides the market and takes competition for product out of the equation. My neighbor owns a plumbing business and has no experience with fishing, but it took him less than thirty seconds to figure out that PQs will serve one purpose well . . . and that fishermen will be paid less for their crab as a result.

Lower ex-vessel prices mean lower crew wages and reduced landing taxes for the State of Alaska.

The Magical 10 percent Solution?—B Shares

The State of Alaska's Issue Paper has states that giving harvesters "B" shares to sell 10 percent of their crab on an open market will restore harvesters bargaining power and guarantee a fair price for all crab deliveries.

The Issue Paper also claim the 10 percent B shares allow new processors to enter the fishery and increase the share of communities like Kodiak with limited qualified "A" share processors.

Simply asserting that a 10 percent of the crab can do all this doesn't make it so. Indeed, these assertions lack supporting analysis. Unless B shares are like the biblical loaves and fishes, it is impossible to believe these shares will provide enough crab to leverage price by offering them to PQ endowed processors *and* provide a pool of product for disenfranchised processors and communities.

In fact, the Council recognized 10 percent was inadequate and initiated a series of trailing amendments to deal with community protections and with price formation through binding arbitration.

Trailing Amendments—Binding Arbitration

PQs would segment and allocate 90 percent of the Bering Sea crab market. Without specific legislative permission, that allocation would constitute a per se violation of antitrust law, equivalent to price fixing. It is a “hard-core cartel agreement” that would otherwise be prosecuted criminally by the Department of Justice. This inherently anti-competitive effect of PQs is the problem that requires Binding Arbitration.

The Council Chairman appointed a committee of fishermen and processor representatives to address the issues of binding arbitration. Over several months of meetings committee developed two distinct approaches.

The Council chose the version supported by processors on a 6–5 vote. That version fails to provide a meaningful safety net. Nor does it provide assurance of an outside option approximating a competitive marketplace.

Real Time Oversight

The Council has repeatedly stated its intent to modify the program to respond to unintended or unanticipated impacts. To do so will require far broader authority than simple legislation to implement the preferred alternative. It is also naive to imagine that some of the effects will be reversible.

Without additional authority, the Council lacks the tools required to address many of the problems that will arise. It is difficult to imagine that Congress will relish taking on the role of real-time program manager. It is also difficult to believe that additional authority should be granted outside the context of the Magnuson-Stevens Fisheries Conservation Management Act.

If Congress authorizes PQs, it will transform Councils’ task from managing fisheries to managing markets. They will need the powers and experience of the National Labor Relations Board, Federal Trade Commission, Department of Justice Anti-trust Division, and Public Utility Regulatory Commissions.

Alternatives to Processor Quotas

There are many alternative approaches that have been utilized to deal with the concerns of processors in a variety of rationalized fisheries. Even without PQs, the crab rationalization plan gives processors substantial protection by program elements. These include:

- Separate Catcher Vessel and Catcher Processor classes of quota, so fishermen can’t process their own crab.
- Regional restrictions on deliveries.
- Processors are allowed to acquire and own harvest quota.
- Limits on consolidation of harvest quota, preserving a diverse supply for processors.

The Council’s Advisory Panel also offered a number of alternatives to PQs which didn’t receive adequate consideration. If analysis did show there was further necessity to protect processors, there are less-damaging alternatives.

The American Fisheries Act provides one such workable alternative to PQs. The critical difference is that while the AFA coops provide a large measure of stability through the requirement for annual coop contracts with an eligible processor, no processor is guaranteed a fixed share of the harvest for more than one year, and ultimately it is competition that governs whether a vessel will remain with a processor or move its quota to another processor.

Legitimate processor concerns can be addressed without authorizing PQs and segmented markets.

Recommendations:

Congress should reject the Council’s request for a radical expansion of its duties beyond fisheries management and into market regulation represented by the request for authorization to adopt the Processor Quota element of their preferred alternative.

If Congress does authorize PQs it is critical to do so in a manner that guarantees that improved community protections and a better binding arbitration process are accomplished first.

Introduction

The CRAB Group supports Crab Rationalization including measures to protect communities and processors. The status quo system has left harvesters on or over the brink of bankruptcy, and has already led to the demise of most of the non-AFA

crab processors. Worst of all, the murderous “race for fish” in the middle of winter kills an average of five fishermen a year.

We believe a fair rationalization program can be developed without resorting to Processor Quotas (PQs) which will result in a segmented monopsony and require endless government regulatory involvement to simulate a competitive market.

Our concerns are detailed in the following discussion.

1.0 What Happened in Dutch Harbor and Why the 11-0 Vote?

The North Pacific Fisheries Management Council staff prepared a 436 page analysis for the crab plan of which just four pages were devoted to the impacts of Processor Quotas. Recognizing the controversial nature of PQs, the Council contracted outside economists Milon and Hamilton from Florida for further analysis of the impacts. These economists produced a 35 page document which highlighted the negative impacts on harvesters. Unfortunately, the Council chose to remove it from the analysis.

At the June meeting where the Council picked its preferred alternative, it passed 20 amendments (and considered many more) to the proposed plan over three days of debate on the element and options of the program dealing with the harvest sector. Not a single motion was made on the regarding the level of PQ, and so there wasn’t a word of debate regarding the impacts of creating a PQ system governing the marketing of 90 percent of the crab.

Aside from the PQ element, the Council did an excellent job of putting together a balanced IFQ system with regional community protection, skipper and crew provisions, a reasonable balance of recent and historic participation credit, and excessive share provisions for the harvest sector. All of which could be adopted without the PQs now the IFQ moratorium has lapsed. However, the processing lobby made it quite clear throughout the process that nothing was going to happen unless and until they got processing quota. In the end all the arguments for PQ come down to this: “Our way, or no way.”

This powerful group has made it clear to everyone seeking to rationalize fisheries, that regardless of the economic cost to other non-diversified processors, fishing communities, vessel owners, or, indeed, the cost in human life for those who work in the nations most dangerous occupation, they will block any action that doesn’t give them control of the harvester’s market choices.

It’s my opinion that the Council, tired of having blood on its hands, chose what they hoped would be the lesser of two evils. Since the Council vote last June Congress allowed the moratorium on IFQs to expire. It is now up to Congress to decide whether Processor Quotas are good policy.

2.0 Are Processor Quotas Necessary or Prudent?

2.1 National Academy of Science Recommendations

In the 1996 Magnuson-Stevens Reauthorization Congress directed the National Academy of Science to provide advice and recommendations on IFQ programs and specifically directed the evaluation of processor allocations. Section 303(d)(5) of the M-S Act directs Councils to consider the recommendations for the NAS report (Sharing the Fish).

2.1.1 “Sharing the Fish” on Processor Quota

Page 205 of “Sharing the Fish” contains a two part recommendation relative to processors and quota. The first part speaks to allocating a portion of the IFQs to processors; the second speaks to creating a “two pie” or PQ system:

“On a national basis, the committee found no compelling reason to recommend the inclusion or exclusion of processors from eligibility to receive initial (fishing) quota shares”

“Nor did the committee find a compelling reason to establish a separate, complementary processor quota system (the “two-pie” system).”

Page 153–155 of “Sharing the Fish ” provides a more extensive and very useful discussion of the issues surrounding processor quota allocations. The NAS concluded:

“The committee was not convinced, however, that the solution to the perceived problems lies in the allocation of either harvesting or processing quota to processors.”

2.1.2 Distribution of Benefits of Quota Shares—Initial Allocation

“Sharing the Fish”—the report to Congress by the National Academy of Science recommended a broad distribution of the benefits of Quota share programs. The benefits are broadly distributed in the initial allocation under the harvester IFQ portion

of the Council's plan. However, the benefits of the Processor Quota are highly concentrated.

- About 250 harvester vessels would get allocations as IFQs.
- Only 21 of the 80 processors who operated in opilio in the last 10 years would receive PQs.
- According to the Council's analysis "the top 12 would receive more quota allocation than they historically processed (96.4 percent compared to 75.66 percent)."
- The top four opilio processors will be guaranteed 57.6 percent of the PQ.

2.1.3 Distribution of Benefits and Consolidation

In contrast to the harvest sector where caps were set at levels that would maintain a minimum fleet size of about 100 boats, processing caps were set so as to allow consolidation to only 2 processing facilities.

Though the processor ownership cap is set at 30 percent, the action would also grandfather in initial recipients of IPQ, not as of the date of Council action in June of 2002, but as of a date in the future when IPQ is actually issued—thus inviting consolidation in the interim.

Use caps were set for only one fishery in one region, (opilio in the northern region) at 60 percent of the IPQ. There was no definition of the duration of "use" (*i.e.*, leasing) as time limited. Thus even if the 30 percent ownership caps did provide for a minimum of 4 processors per fishery, the lack of "use" caps allows the ownership caps to be neatly circumvented by 99 year leases.

In addition to the lack of meaningful consolidation limits for PQs holders, individual processing companies are allowed to own up to five percent of the harvest quota, while harvesting companies are limited to one percent.

The Council's lack of meaningful action on ownership and use caps opens the door to unconstrained consolidation of the processor sector before and after implementation. There is a fundamental inconsistency between the concerns imbedded in the MS-FCMA over excessive shares and promoted in the NAS report, and the creation of PQs.

2.1.4 Foreign Ownership

On page 155 of "Sharing the Fish" the NAS notes:

"If there is a consistent congressional policy, it can be characterized as resistance to foreign ownership of fishing vessels and foreign exploitation of fish resources with the U.S. EEZ (e.g., 16 U.S.C. 1812[a], 1824[b][6]). The concerns giving rise to the exclusion of foreign interests fall within several categories:

- Fear of foreign domination of the maritime industry and fisheries;
- Difficulties in regulating foreign-owned businesses;
- Threats to the social values of U.S. fishing communities; and
- Loss of potential economic benefits.

The Council's analysis (page 393) showed that between 37 percent and 49 percent of Processor Quota would be allocated to foreign processors. This does not take into account the amounts to be allocated to domestic "shell" corporations, formed to qualify vessel ownership under MARAD rules. [*e.g.*, Peter Pan Seafoods, a Japanese-owned company, would receive an estimated 14 percent of initial PQS for opilio. A subsidiary which owns a processing ship, Steller Sea, would receive as much as 5 percent additional allocation, which has not been accounted as allocation to foreign processors.

It is unlikely that foreign owned processors could be precluded from being issued Processor Quota, because they would rely on treaty protections to demand equal treatment (as occurred under the AFA). It is ironic that we restrict the allocation of IFQs to U.S. citizens only, when Processor Quota would require some of those U.S. citizens to sell their property/catch to foreign owned processing companies.

Processor Quotas are inconsistent with the recommendations of the National Academy of Sciences found in "Sharing the Fish."

2.2 Economists' Views on Processor Quotas

The entire theoretical underpinning of Processor Quotas rests on the work of one economist—Scott Matulich. It is his belief that in a free market, fishers with IFQs will "expropriate the quasi-rents rightfully belonging to processors" because harvesters would no longer fear that company owned boats would pre-empt their catch if they were to go on strike.

Matulich has been able to parlay this diagnosis into a prescription for a particular cure of his own design called the "2-pie" or PQ system. The Council bought off on

this prescription at a particular dosage level PQs for 90 percent of each catcher boats' harvest. Unfortunately there is no FDA to require testing on this new medicine to determine a safe dosage level, before it is administered to the crab fleet.

To judge whether the side effects of Matulich's cure are likely to be worse than the disease, it is necessary to turn to other economists. As noted in the preceding section the National Academy of Science considered and rejected Matulich's prescription. They were not alone.

2.2.1 *The GAO on Matulich*

In December of 2002 the GAO provided this committee with a report on IFQs which contained a very critical review of a paper by Matulich purporting to provide an empirical basis for his theory in the context of the existing Halibut and Sablefish IFQ program. They questioned the methodology and the potential for bias in the survey design for gathering data.

2.2.2 *Economists on Processor Quota—Milon and Hamilton*

In a paper prepared under contract for the Council by Florida economists J. Walter Milon and Stephan F. Hamilton (A Comparative Analysis of Alternative Rationalization Models for the Bering Sea/Aleutian Islands Crab Fisheries—March 2002) the authors describe the impacts of a "segmented monopsony."

In discussing the IPQ model Milon and Hamilton noted:

"The (PQ) quota allocation defines a property right of each processor to serve a perfectly segmented market, and, with a fixed quantity of harvest, each processor maximizes his profits by paying the lowest ex-vessel price that supports harvester delivery of this quantity. *The outcome is regional monopsony ex-vessel pricing* . . . Accordingly, the delineation of processor quota rights subsumes all economic rent from the ITQ program in the harvest sector . . . With a two pie permit distribution that allocates the full processing quota, the value of harvester permits are driven to zero . . . With completely defined property rights in the processing sector, the allocation of property rights in a harvest sector ITQ program becomes redundant."

The Council stopped just short of completely defining property rights in the processing sector, leaving 10 percent of the catcher boat harvest in an open market.

Milon and Hamilton went on to observe that in a system where some percent of the harvest share remains "free market" (such as the 10 percent recommended in the Council action) the outcome is a blend that:

" . . . results in a continuum of market segmentation levels. Consequently, all possible two-pie permit distributions have identical implications for economic efficiency, but differ in the degree to which the policy rent is shared between market participants. *Processors are likely to fare better, and harvesters fare worse, as the ratio of A to B permits increases in the proposed fishery management system.*"

Cartels are precluded by existing anti-trust laws. It is ironic that the same outcome (monopsony pricing) would be legally achievable under Processor Quotas. The only functional difference is that when a legal Processor Quota system segments the market, it will be more effective than if a group of processors had conspired to set prices. In the latter instance there is always hope that a new processor could enter destabilize the cartel by offering competitive prices.

2.2.3 *Economists on Processor Quota—Halvorsen*

Economist Dr. Halvorsen, who was contracted by the Council for an earlier analysis of the distribution of bargaining power under different "game" rules for American Fisheries Act coops, was also critical of the Matulich 2 Pie theory. Dr. Halvorsen presented a paper to a hearing of the U.S. House Resources Committee explaining the theoretical deficiencies of the Matulich theory. Additional analysis by Dr. Halvorsen have been submitted to this committee by Mayor Freed.

2.2.4 *Economists on Processor Quota—Christy and Anderson*

Two other very prominent fisheries economists served on the NMFS Advisory Panel to the NAS when "Sharing the Fish" was prepared, Lee Anderson (chairman of the NMFS East Coast AP) and Francis Christy. Christy, who worked in fisheries for many years for the UN-FAO, is considered to be the economist who came up with the idea for IFQs. Lee Anderson, who wrote a seminal text book on IFQs and economic theory, was a member of the Mid-Atlantic Fisheries Management Council when the 1st IFQ program was adopted. Both economists have been very critical of the Matulich theory and of the idea of PQs. While Anderson recognizes the potential for negative impacts on processors from IFQs to the extent that their capital

is non-malleable, he doesn't advocate PQs as the appropriate fix for that potential problem.

3.0 Do We Believe in the Value of a Competitive Marketplace?

3.1 Price Formation Under Status Quo versus Under Processor Quota

The heart of the controversy over Processor Quota goes to its impact on price formation.

3.1.1 Price Formation Under Status Quo

Given the depressed state of crab stock, the last Bristol Bay Red King Crab fishery lasted just over three days. The last opilio season was a matter of weeks. These are the two major crab fisheries. Price has been negotiated pre-season by a marketing association. The derby nature of the fishery makes it difficult to "shop around"—crabbers have generally been price takers in a world market for crab.

The opilio catcher boat fleet has gone on strike the last couple years. However, because there are a number of catcher processors who fish a common quota with the catcher boats, striking means foregoing a portion of the harvest. One of the major processing companies owns 4 of the catcher processors, so their reaction to a strike is "throw me in the briar patch."

With three day seasons in the Red King crab fishery, strikes would be economic suicide for catcher boats. Matulich is right about one thing, shortened seasons are better for processors than they are for harvesters.

3.1.2 Price Formation Under Processor Quota

The program the Council passed and has requested Congress to make legal is very different. It allows harvesters to sell 10 percent of their catch to the processor of their choice. The other 90 percent must be delivered only to a processor holding unused IPQ. This results in a game of "musical chairs" where the "last man standing" has no choice about where to sell—and as a consequence there is an urgency to "sit down" early at a sub-optimal price to avoid being the "last man standing."

If a harvester wishes to move to a different processor because they are unhappy with the way they are being treated, there is only one way to do it. They must displace someone who is working for a different processor. The only way to do that is to offer to fish at a lower price than the person you are displacing. This fundamental alteration of the dynamics into a game of musical chairs destroys the ability of fishers to benefit from collective bargaining as provided under the 1934 Fishermen's Marketing Act.

3.2 The Nature of the Right or Privilege represented by the Processing Quota

There is a fundamental difference in purpose between IFQs and PQs. The purpose of PQ is to direct the transfer of private property. The purpose of IFQs is to allocate access to a share of free swimming critters, which up to the point of capture, are a public trust resource.

IFQs are generally understood to be a privilege to harvest a fixed portion of the common property public trust resource. The result of being allowed to harvest that resource is that it is converted to private property at the point of harvest.

A PQ is a right or privilege to process a fixed portion of the harvest. Congress has been clear that they regard Harvest Quota shares as a privilege, but there is a spectrum between "privilege" and "right" that has yet to be debated with regard to PQs. The wrinkle here is that crab, once harvested, have been converted to private property. Thus, it appears that the PQ directs the disposition of private property, rather than the disposition of a public resource.

The introduction of PQs for the purpose of eliminating or restraining competition among processors creates a regulated marketplace and the need to provide a substitute mechanism for price formation.

4.0 Making a Square Wheel Round—Fixing the Impacts of PQs

The Council failed to analyze and debate the impacts of a 90/10 PQ system up front and made the assumption that allowing 10 percent free market or "B shares" would serve to simultaneously allow opportunity for disenfranchised processors and communities as well as provide harvesters leverage for obtaining a fair price. The Council also set in motion a process of "trailing amendments" to address price formation through "binding arbitration" and "community protections."

4.1 Will 10% B Shares Serve Their Intended Purpose?

The State of Alaska's Issue Paper has said that "B" shares will

- Protect harvester's bargaining power and guarantee a fair price for all crab deliveries.
- Provide a pool of product for new processors to enter the fishery.
- Increase the share of communities which have limited qualified "A" share processors.

The National Environmental Policy Act requires the evaluation of regulatory actions by examining contrasting alternatives, so that decisions rely on analysis rather than unsupported assertions.

In order for the above assertions to be possible, it must be plausible that being a non-PQ endowed processor is a viable business. This raises the threshold question, "How does a non-PQ endowed processor attract B share deliveries?"

4.1.1 A Simplified Answer

The following is a very simple modeling exercise that shows the answer is "no." Assume a base ex-vessel price of \$1/lb in the PQ sector.

Assume a Processor 1 is PQ endowed with 1,000,000 lbs and takes A share deliveries from 10 vessels with 100,000 lbs each.

Assume Processor 2, not PQ endowed needs 100,000 lbs to justify operating a crab line.

In order to attract deliveries from 10 vessels with 10,000 lb each of B share crab Processor 2 will have to pay some sort of incentive bonus. If Processor 2 determines it can pay \$1.10 (a 10 cent "competitive bonus") and still show a profit, will doing so attract deliveries of B shares?

In order to retain the deliveries of the 100,000 lbs of B share crab from its 10 vessels Processor 1 will have to pay some sort of "loyalty bonus." If Processor 1 determines it is willing to pay \$1.01 (a 1 cent "loyalty bonus") pro-rated over both A and B deliveries, why would the vessels deliver B shares to Processor 2?

Both Processor 1 and 2 are paying an "extra" \$10,000 to get the B share deliveries. The difference is that Processor 1 is amortizing that \$10,000 over 1,000,000 lbs and Processor 2 is amortizing over just 100,000 lbs. This gives the PQ endowed processor a 10:1 advantage over the non-PQ processor. (If B shares had been set at 20 percent the PQ endowed processor would still have a 5:1 advantage, or about a 3:1 advantage if B shares had been set at 30 percent)

Entry by a non-PQ endowed processor is unlikely to occur unless PQ endowed processors are indifferent to retaining B share deliveries. If any new processors did enter, they would quickly be driven out by the endowed processors price leverage. When the game is this clearly rigged, very few will make the mistake of playing.

If there are no non-PQ endowed B share processors, they can't fulfill the variety of functions asserted in the "Issue Papers."

4.1.2 The Missing Analysis

One of the stated purposes of PQs is to address the transitional costs associated with non-malleable capital in the processing sector. The analysis currently lacks any quantitative analysis of the crab specific fixed capital (malleable or otherwise) in the processing sector.

Part of the reason for the lack of analysis is that Section 303(b)(7) of the M-S Act exempts processors from the requirement to submit economic data. As a result they are free to claim harm, but the analysts don't have the ability to verify their claims.

If analysis shows that there is only 10 cents on the dollar of bargaining power at stake in the choice between PQs at levels between 0 percent to 100 percent, that difference represents a difference of \$10–50 million per year in ex-vessel revenue. That difference in revenue in turn affects the raw fish tax collected by the state of Alaska as well as wages for crew flowing into communities. The analysis should have included an evaluation of the level and duration of the PQ necessary to compensate the transitional costs of the processing sector; but again, processors have hidden behind the lack of data.

4.2 Binding Arbitration—A Substitute for Competition?

The Council recognized that PQs would have a profound impact on price formation and so they initiated a trailing amendment to deal with Binding Arbitration. The NPFMC Chairman appointed a committee of fishermen and processor representatives to address the issues of binding arbitration. This committee developed two distinct approaches.

4.2.1 Need for Arbitration

Binding arbitration is necessary to address the inherently anti-competitive effect of the PQ component of crab rationalization. The magnitude of the problem is pro-

portionate to the A/B share split, and at 90/10 the Binding Arbitration process plays a crucial role in substituting for the removal of a competitive market for harvesters.

PQs would effectively segment and allocate 90 percent of the market into which crab harvests will be delivered. That action would radically shift negotiating leverage between harvesters and processors relative to status quo. Without a specific legislative exemption, that action would constitute a “per se” violation of antitrust law equivalent to price fixing. It is a “hard-core cartel agreement” that is prosecuted criminally by the Department of Justice.¹

Binding arbitration is intended to address failed price negotiations, and to reintroduce parity lost through processor market segmentation. Binding arbitration is not intended to be a substitute for consensual price negotiation, and we expect and intend that most if not all crab delivery contracts will be settled through negotiation. However, all negotiations are conducted against the parties’ outside option if negotiations fail, which in this case is the price that would be set under arbitration. Therefore, the results of the model chosen will directly condition the results of such negotiations.

While it is not panacea that will undo the anti-competitive impact of PQs, the “Fleetwide” conventional arbitration model more appropriately addresses the negotiation leverage shift associated with the Council’s preferred rationalization alternative. The segmented “Last Best Offer” model, does not.

4.2.2 *Contrasting the Alternatives*

The Council tasked the Binding Arbitration Committee with developing an arbitration program, and the committee came back to the Council with two models referred to as the “Fleetwide Minimum Price” (FW) and the “Last Best Offer” (LBO) models.

The names of the two Binding Arbitration models don’t capture the range of differences.

4.2.2.1 *What’s In a Name?—Fleetwide Arbitration*

We believe the FW model works better than the segmented LBO model in part because it is more closely models the current price formation process, by setting price before a harvester is required to make an irrevocable commitment to deliver.

As its name implies the “Fleetwide” arbitration model is designed to create a minimum price that is available to the whole fleet as a “safety net.” It allows the arbitrator to “cut the baby” and establish a minimum price that is between the positions taken by either processors or harvesters in the preliminary negotiations.

4.2.2.2 *What’s In a Name?—Last Best Offer Arbitration*

Under the segmented LBO model, harvesters must irrevocably commit to deliver their crab to a processor to trigger a price arbitration. This is a highly unusual departure from standard commercial practice. It is akin to entering a contract to buy a house before the price has been revealed. It will have adverse economic and psychological effects on harvesters entering the negotiation process.

Given that the purpose of Binding Arbitration is to compensate for the creation of a segmented market, providing a reasonable outside option makes more sense than stripping the harvester of the right to strike.

The “Last Best Offer” model involves separate isolated arbitrations for each processor and for individual harvesters or groups of harvesters delivering to a particular processor. While LBO arbitration forces parties to narrow the range of proposals submitted to the arbitrator(s), also disadvantages the more risk averse party, and invites strategic gaming by processors. Crab harvesters, who typically depend heavily on their crab revenues for survival, are likely to be much more risk averse in crab price negotiations than crab processors who have other sources of income (such as AFA pollock processors).

Harvesters in these circumstances have proportionately more to lose than their processor counterpart. As a consequence, they may well have a strong incentive to buy their way out of arbitration at a discount, rather than enter a process under which an arbitrator is constrained to accepting one or the other of the parties’ price proposals, rather than having the latitude to frame an equitable result.

¹ By contrast, fishermen have had an exemption from antitrust law that allows them to collectively harvest, process, market and/or sell their catch since the adoption of the Fishermen’s Collective Marketing Act in 1934. Through a qualifying fishermen’s cooperative, it is legal for fishermen to allocate among themselves harvest shares of a fishery, and to collectively negotiate the prices at which they are willing to sell their catch. It is also legal for Councils to adopt individual fishing quota programs which allocate harvest shares by regulation.

4.2.2.4 Dr. Plott's Analysis

The FW model was deliberately designed to produce an environment in which the parties are encouraged to collaborate to produce additional value. In Dr. Plott's experimental analysis for the Council, it appears to have done so. On the other hand, the segmented LBO model fractionalizes parties, and in Dr. Plott's experiments produced a more contentious negotiating environment, with fewer well timed deliveries, and at least one instance of a harvester choosing not to "deliver." This is an important consideration, if we are hoping to obtain additional value from our crab resources through rationalization.

4.2.2.5 Information available to the arbitrator(s)

It is critical under either model that the arbitrators have access to data concerning historical and current crab transactions. Under the FW model, all arbitrations are conducted by the same arbitrator or arbitration panel. However, under the segmented LBO model there is no assurance of such information exchange.

This is important, as there are unresolved legal and policy issues which may prevent the arbitrators from accessing the database being established in connection with the program to verify the accuracy of information submitted in the discrete arbitrations. Section 303(b)(7) and 402(b) of the M-S Act prevent the collection of necessary verification data from processors, and would prohibit its release to an arbitrator even if it were collected.

4.2.2.6 Arbitration timelines

The FW model was designed to prevent the arbitration process from being time constrained. The segmented LBO system has set what we perceive to be an extremely tight time frame within which all arbitrations would take place. We are concerned that the resulting time constraint may shift negotiating leverage inappropriately, and prevent an effective exchange of data between arbitrations.

The compressed 15 day timeline for LBO arbitration is likely to require separate arbitrators as well. This means that any individual arbitrator will have a limited information base to evaluate the market. A single Arbitrator with access to a broad view of the full market under the FW model is better situated to determine a fair minimum price. If each PQ owner's arbitrations are happening in a vacuum, the arbitrator will have a narrow frame of reference for ground-truthing the PQ owner's data.

4.2.2.7 Arbitration administration

Given the significance of binding arbitration in the context of a segmented and allocated processing market, we think it is far more critical that the system function well than be cheap. In any case, we do not believe that the relative costs of the two systems would be substantially different. The FW model would generally use one arbitrator or a single panel over a longer time, while the segmented LBO model would use more arbitrators or arbitrator panels over a shorter time frame.

4.2.3 Quality issues

Quality affects price, and in the absence of well defined quality standards and a quick, efficient and equitable enforcement system, quality issues could skew negotiating leverage notwithstanding arbitration system design. This remains as an issue that needs to be referred to the Binding Arbitration Committee for further work.

4.2.4 Data Verification

The Analysis states on page 3.7-8 that the arbitrator will need to invest substantial time and effort into development of the historic division of revenues standard, and to determine both historic ex vessel prices and first wholesale prices. It notes:

"The magnitude of this problem is not likely to be fully understood until the arbitrator begins the process of calculating the division of revenues."

The Analysis points to a long list of complicating factors in the arbitrators' task. It states that determining the historic first wholesale prices and revenues division will also be:

"complicated by the lack of uniformity of processors and the different products those processors sell into different markets."

"complicated by vertical integration of the processing sector."

"complicated by several other factors . . ."

" . . . sensitive to the production levels of specific products . . ."

" . . . sensitive to changes in total harvest . . ."

“ . . . (and) location of landings”
 “*complicate(d)* . . . (because) Commercial Operator Annual Reports (COAR)
 . . . distinguish species, but not fishery.”

Without the ability to access the Data Collection system, it is imperative that the Arbitrator will not have the ability to “ground truth” information provide by participant. There is a need for retroactive gathering of data to establish a baseline for measuring impacts of PQs and the efficacy of Binding Arbitration. Unfortunately this may be an impossible task.

NOAA-GC has said that the Data Collection program will be unable to either provide the necessary data, or even verify the accuracy of data provided to the Arbitrator by participants, without changes to section 303(b)(7) and 402(b) of the M-S Act.

4.2.5 The Council’s Revised “Last Best Offer” Model

The Council ultimately adopted a revised LBO model which incorporated a watered down version of what is called the “Steele amendment.” The Steele amendment would have utilized the highest arbitrated price (reflecting a minimum of 7 percent of the market) resulting from the LBO process to establish a fleetwide price. In one significant way this reflects current practice where the Alaska Marketing Association negotiates with a number of processors and signs a contract with the processor with the best offer, and then that offer is ultimately matched by other processors.

The success of the Steele amendment version of LBO would have depended on the continued survival of a number of processors in the 7 percent market share range. Under the consolidation rules, these smaller IPQ holders may disappear over time, and with them the potential of the revised LBO to achieve its goal of a quasi-competitive fleetwide price.

However, the Council’s revised LBO alternative merely uses the information on the highest price representing 7 percent of the market as information available for the arbitrator’s consideration in the subsequent year.

The Binding Arbitration process recommended by the Council fails to provide a meaningful safety net. It does not provide assurance of an outside option approximating a competitive marketplace.

4.4 Community Protections

The second set of trailing amendments dealt with community protections. The CRAB Group concurs with the testimony of Mayor Freed of Kodiak.

The supposed “right” of first refusal is an ephemeral and unworkable “protection” to a problem that would not exist but for the inclusion of PQs in the program.

PQs facilitate consolidation and the lack of meaningful processor consolidation limits in the program ultimately means plant closings in remote Alaskan coastal communities.

4.4 Government in the Marketplace

The Council has repeatedly stated its intent to modify the program to respond to unintended impacts. If it is to do so it will need far broader authority than legislation which simply implements the preferred alternative. This implies the Council is asking for a blank check from Congress. If Congress doesn’t provide a blank check, then Congress must exercise real time oversight of the program as only Congress will have the power to amend it. It is naïve to imagine that Congress can micro-manage the impacts of PQs in real time, or that the impacts will be reversible.

When government steps in to try to simulate the function of a competitive market it is sticking its foot in a tar baby. If Congress authorizes PQs, it will transform Councils from fish management bodies into a hybrid of, or delegating the authority of, the National Labor Relations Board, Federal Trade Commission, Department of Justice Anti-trust Division, and a Public Utility Regulatory Commission. Council members are not selected for their competence in these areas, which is why they do not currently have the authority to adopt PQs.

5.0 Alternatives to Processor Quotas to Protect Processors

There are many alternative approaches that have been utilized elsewhere to deal with the concerns of processors in a variety of rationalized fisheries. These include elements in a number of existing programs, as well as proposed alternatives that didn’t receive adequate consideration by the Council.

In the crab rationalization plan, processors were given substantial protection by various program elements including the following:

- Processors are allowed to own and acquire IFQs.

- Catcher Vessel IFQ holders must deliver their crab to processors rather than processing themselves as Catcher Processors.
- Regional restriction on deliveries, which favor existing processors.
- Limitations on consolidation of IFQ ownership at 1 percent each for harvesters, which preserve a diverse supply for processors.
- Processors are allowed up to 5 percent each of the harvest IFQ, in contrast to 1 percent limit for harvesters.

Without analysis of the adequacy of these provisions, nor discussion or debate, the NPFMC added the provision of Processor Quota. If analysis shows there is further necessity to protect processors, there are less-damaging alternatives in existing programs such as the AFA.

5.1 Existing Programs

5.1.1 AFA Pollock in the Shoreside Sector

- AFA shoreside processors were collectively guaranteed an increased share of the pie.
- AFA shoreside processors were provided a closed class.
- AFA shoreside processors were provided with a degree of stability in the design of the coop rule.

AFA catcher vessels are only guaranteed their history as a member of a coop with a processor partner. 90 percent of the catch history of the coop had to be delivered to the processor partner in a given year. Though vessels are able to move between processors annually, disincentives were built in that discouraged movement between coops, where the alternative to being in a coop was an open access derby for one year.

The critical difference between the AFA processor protections and PQs is that while the AFA coops provide a large measure of stability through the requirement for annual coop contracts with an eligible processor, no processor is guaranteed a fixed share of the harvest for more than one year, and ultimately it is competition that governs whether a vessel will remain with a processor or move its quota to another processor.

5.1.2 Halibut & Sablefish IFQs

Halibut and sablefish shoreside processors were protected from competing with freezer boats.

5.1.3 British Columbia's IVQ Groundfish

In the BC Canada groundfish ITQ, the allocation of 10 percent of a vessel's catch history is conditional on community and processor concerns.

5.1.4 Eastern Canada Opilio Crab

In the "harvester only" IFQ program for snow crab, binding arbitration was instituted to set a base price. It is worth noting that crab processing there is still profitable enough that it has attracted a number of new entrants.

5.2 Alternatives discussed by the NPFMC's Advisory Panel

The Council's Advisory Panel offered a number of alternatives to Processor Quotas which didn't receive adequate consideration.

- Processors could be allocated a portion of the harvest ITQ commensurate with their relative proportion of fishery specific non-malleable capital.
- A quasi closed class of processor, guaranteeing a percentage of the harvest to be delivered to the class of eligible processors based on their aggregate processing history.
- An AFA style coop with disincentives for not joining or for leaving a coop.

There are many options for addressing processor concerns without adopting PQs and a segmented market.

6.0 Public Comment—Who Supports Processor Quotas

Letters submitted to the Council concerning Crab Rationalization at the June 2002 meeting were overwhelmingly against Processor Quota.

The single harvesters association endorsing Processor Quota was Alaska Crab Coalition, who supported it at the 80 percent level, with the remaining 20 percent to be "free market." Their written rationale for limiting PQs to 80 percent provided to the Advisory Panel at the June Council meeting makes an excellent case as to the

problems with Processor Quota at any level. Their recent (albeit temporary) retraction of support for the PQ program following the April Council action on Binding Arbitration stated:

“The ACC cannot accept the arbitration approach adopted by the Council, and accordingly is forced to oppose statutory authorization of the BSAI rationalization plan, until and unless the Council adopts a system that protects harvesters against market distortions that would otherwise result from processors shares. Whether that can be achieved within the context of the 90/10 formula is an open question.”

Though ACC is now “confident that crab harvesters will be provided the comfort level they expect and deserve” in the ongoing process. The open question of the moment is what changes ACC expects will be adopted, but it is clear that they recognize the reality that Processor Quotas will result in “market distortions” and that even they question whether 90/10 isn’t going too far.

The CRAB Group, representing over 100 vessels, supports rationalization of the crab fishery but is opposed to PQ for all the reasons outlined in this document.

There are several associations representing segments of the crab fleet in addition to ACC and the CRAB Group.

- United Fishermen’s Marketing Association, Inc. (UFMA) based in Kodiak strongly opposes PQs in the crab fishery or any other fishery.
- Tom Casey, representing the 30 crab vessels in the Alaska Fisheries Conservation Group (AFCG), has stated that their members find the 90 percent PQ program so untenable that they would prefer status quo.
- Jake Jacobs representing the Alaska Marketing Association testified at the April Council meeting that “Last Best Offer Arbitration is an open sore.”

A petition signed by over 1,000 Alaskans was published this week in the *Anchor-age Daily News*. Other petitions circulated in the Seattle area with several hundred signatures were submitted to members of this committee by Fishermen’s Finest company.

Changing the M-S Act to allow for Processor Quotas in the Bering Sea crab fishery is only the allowing the camels nose into the tent. If it is allowed in this fishery, the pressure to allow it in all federally managed fisheries is inevitable. Does Congress really want to open up this can of worms and transform fisheries management Councils in to bodies with the authority to regulate trade? If so, then expect the amount of public comment on how to regulate markets to escalate exponentially.

7.0 Where Angels Fear to Tread—Recommendations

It is the position of the CRAB Group and others that Congress should reject the Council’s request for a radical expansion of its duties beyond fisheries management and into market regulation represented by the request for authorization to adopt the Processor Quota element of their preferred alternative.

The harvester component of the crab rationalization program is legal now that the moratorium on IFQs has expired. It can be adopted together with the CDQ provisions, the regionalization provisions, and the skipper and crew provisions designed by the Council, but without PQs.

The need for the complex elements on binding arbitration and additional community protections are largely a response to the impacts of market segmentation resulting from PQs.

If Congress does authorize PQs it is critical to do so in a manner that guarantees that improved community protections and stronger binding arbitration process are all done at the same time and done right.

Thank you for the privilege of submitting this testimony to your committee.

August 2, 2002

THE BERING SEA CRAB RATIONALIZATION PREFERRED ALTERNATIVE OR ANTI-TRUST:
WHY OPPOSITION TO THE PROCESSING QUOTA PLAN IS GROWING

Summary: During the North Pacific Fisheries Management Council’s (NPFMC) June meeting, the State of Alaska presented a comprehensive crab rationalization motion, which with surprisingly few amendments, was unanimously approved. This plan contains several elements that require congressional approval, so a report to Congress is being drafted detailing the council’s preferred crab rationalization plan.

One of the elements that will require congressional action is Processor Quota (PQ). This element is also being debated in the Magnuson-Stevens Act reauthorization.

Recommendation:

CONGRESS SHOULD NOT AUTHORIZE PROCESSING QUOTA FOR THE CRAB PLAN OR IN THE MSFCMA.

Because of Processor Quota, the crab plan is opposed by more than half the vessels in the affected fisheries, and three of the four associations of vessel owners in these fisheries. Because of processor quota, one community publicly supports the crab plan while two Boroughs, two native associations, three cities and *more processors than not*—oppose it. We expect that as the salmon seasons wind down, more communities, native associations, and fishing groups will join the opposition.

Discussion:

The State of Alaska has circulated a document containing a number of issue papers describing the Bering Sea Crab Rationalization Plan in glowing terms.

In fact, the plan actually provides a new mechanism for complete control of the market by a single processor.

Consolidation of so-called excess processing capacity is guaranteed. Many of the processors involved have already benefited from the American Fisheries Act.

Proponents urge that Congress, should not attempt to second guess the NPFMC. They compare the NPFMC plan to a three-legged stool, which is designed to balance. However, a relatively small group of interests dominated the stool's construction. Those who would not concede that processor quota was an essential element were completely subsumed to those interests represented at the NPFMC table.

Background:

The Council could not properly design the “processor leg of the stool,” because the processors represented at the Council table acted in concert to frustrate Council implementation of a rationalization plan for the BSAI crab fisheries.

Rationalization proceeded in incremental steps beginning with the 1992 moratorium on new vessels entering the Federal fisheries in the North Pacific. In 1995 the council adopted a limited entry program, followed by a recency requirement in 1998, and in 2001 by a not yet implemented buyback program.

Individual Fishing Quotas, a controversial element of this long-range plan, have become generally accepted by the crab fleets. In developing a consensus on appropriate crab rationalization measures, IFQ resistance has been mitigated by including provisions for elements imposition of strict “caps” on ownership and use of IFQs.

Processor representatives made it clear that they would not allow rationalization of the crab fisheries without Processing Quota. At a NMFS workshop on IFQ programs in Galveston this summer, these interests declared that they would block *any* IFQ programs, if they were not given Processing Quota in the BSAI crab fisheries.

Processing Quota became the price that fishermen had to pay in order to slow down the world's most dangerous of fisheries. It's not surprising, therefore, that a small group of fishermen became willing to pay this price.

Part I—The Case of Processor Quotas—Is it Reasonable?

Why Processor Shares Are Not Necessary:

The market division and consolidation sought by proponents of processor quota are not allowed under the Sherman Act, and consequently would require special enabling legislation. What is the justification for this?

Processors have offered several justifications for Processor Quota in the BSAI crab fisheries. These include issues of:

- stranded capital,
- lower profitability,
- potential impacts on isolated rural communities,
- compensation for those who will leave the industry because of excess processing capacity,
- concerns about competition with new processors attracted to the rationalized fisheries.

None of these arguments ultimately hold up to scrutiny.

Stranded Capital

Advocates claim that processing quota is justified on the grounds that a transition from open access to an IFQ program in the halibut/sablefish fisheries caused problems for processors.

The National Academy of Sciences report to Congress, *Sharing the Fish* stated that:

“Adversely affected processors assert that harvester-only IFQs may result in stranded capital, lower profitability and significant impacts on isolated rural communities.” In addition, “The arguments for allocating harvesting or processing quota to processors derive from a desire to compensate those who will leave the industry because of excess processing capacity.”

However, rather than accept the assertion that processing quota was a reasonable solution to the problems expressed, the NAS panel recommended:

“If the regional councils determine that processors may be unacceptably disadvantaged by an IFQ program because of changes in the policy or management structure, there are means, such as buyouts, for mitigating these impacts without resorting to the allocation of some different type of quota . . . For example, coupling an IFQ program with an inshore-offshore allocation would preserve the access of shore-based processors to fishery resources.”

Stranded Capital is also a Function of the Derby

The Council analysis notes:

“The problem of stranded capital in the processing sector is difficult to assess. . . . In recent years, some crab processing facilities have been removed from service and are currently idle. This suggests that crab rationalization (and the current low stocks) have fishery declines and crab rationalization, however, is somewhat problematic. Since support facilities are often developed for use in multiple fisheries, it [sic] changes in crab fisheries might not be the sole cause of stranded capital. Declines in crab fisheries, however, are certainly a contributor to stranded capital in the processing sector.”

Successful rebuilding of the fisheries, a key element of the rationalization plan, will produce a need for far more processing capacity than is presently utilized.

Under an IFQ, smaller, currently closed, fisheries can be safely opened.

Impacts on Isolated Rural Communities

The Council accomplished this by partitioning the allocation of IFQ into Northern and Southern shares. This regionalization in the crab plan partially addresses the problem of potentially significant impacts from an IFQ on isolated rural communities. Regionalization doesn't require IPQs to function.

Compensated Exit

How well does the NPFMC crab plan compensate those who will leave the industry because of excess processing capacity?

- The plan qualifies 21 processors in the *opilio* fishery, even though 80 different processors worked in the fishery between 1991 and 2000.
- The plan reallocates history from the smaller processors to the largest.
- Compensation for forced exit in the processing industry resulting from excess capacity is not provided by the crab plan.
- Forced exit is institutionalized by the crab plan.

Fear of New Competition

Processors claim that facilities will become surplus because there will be new processors attracted to the rationalized fisheries. These processors, it is said, will operate low cost operations, because there will not be a necessity to handle the volumes that were formerly required.

This fear of competition by new entrants is itself an indication that there is potential profit for processors in a rationalized fishery without Processor Quotas.

Ending the Race for Fish

Processors have claimed representative the race for fish was driven by processors as well as fishermen, and therefore there would not be an end to the race for fish, unless processors also stopped competing. He advocated that Processing Quota was the way to end processor competition.

Experience of the halibut sablefish IFQ programs and other IFQ fisheries clearly shows PQs aren't necessary to end the race for fish.

The desire of processors to end competition by segmenting the market has one objective—to provide the mechanism for paying a lower price to harvesters.

Power to Control the Process

Justifications of Processor Quota in the BSAI crab fisheries based upon the reasonable arguments of stranded capital, lower profitability, potential impacts on isolated rural communities, and compensation to for exit due to excess processing capacity, do not stand up to scrutiny.

Processor representatives have repeatedly told the fleets that they “will not allow” rationalization of the crab fisheries without processing quota. Power, rather than reason, carried the day with the Council.

The motion to allocate processor quota passed with out *any* discussion of alternative methods to mitigate processor concerns.

Part II—The State of Alaska Issue Papers—Facts or Fallacies?

It is important to distinguish between the expressions of intent set forth in the State of Alaska’s compilations of *Issue Papers* and the probable impacts that legislation of this crab plan would produce. In a number of instances the impacts were examined, and are at variance with the conclusions drawn by the State of Alaska, and consequently, with the expressed intent of the crab plan.

Discounted Processing History—Fallacy 1:

The *Issue Papers* refer to the effect of the 10 percent open market or B shares as “discounted processing history” since PQ is allocated for only 90 percent of the harvest.

“No processor will receive 100 percent of their processing history. They will receive 90 percent, leaving each processor to have to compete with other processors to secure the remaining 10 percent of processor shares.”

providing opportunities for new processors and increased harvester leverage in the price formation process,” and “The intent of this discount is to counteract any *potential* gain in processing power.” [Emphasis in the original.]

Discounted Processing History—Fact:

The Council’s own analysis states:

- “the top 12 [processors] (with one exception) would receive more quota allocation than they historically processed” (99.4 percent compared to 75.66 percent)
- A narrow qualification window for processors, excludes over 50 processors who have bought crab in the last 10 years. This reallocates “processing history” to the “top 12”.
- Nearly *one quarter* of the processing history is first redistributed from smaller and disqualified processors to the largest processor quota share holders. Only then is it “discounted” by 10 percent.
- The allocation of processing history’ is a *reduction* of broader market opportunity, and a *bonus* above the historic share for the largest of the processors.
- By contrast, the harvester program reallocates shares from those with greater history, to those with less, leaving the average harvester with about 88 percent of their own historic catch.
- The Council had no discussion, and built no record, for their unanimous selection of this skewed allocation of processing shares, or of the 90/10 split between A and B harvest shares.

Discounted Processing History—More Fallacies:

The *Issue Papers* refer to the effect of the 10 percent open market or B shares as “discounted processing history” since PQ is allocated for only 90 percent of the harvest.

- “the remaining 10 percent of processor shares . . . [provide] opportunities for new processors and increased harvester leverage in the price formation process,”
- “The intent of this discount is to counteract any *potential* gain in processing power”
- “Based on the cost and wholesale data provided by crab processors, it does not make sense to discount processor history any more than the 10 percent level selected by the Council. Data . . . shows processor margins are very thin, . . . *With these low margins, processors will be hungry for all deliveries of crab, especially the crab delivered last.*”

Discounted Processing History—More Facts:

The writer makes several critically flawed statements:

- That a “discount” of Processor Quota shares actually exists.—Which the Council Analysis shows is not the case.
- That any such market competition would be permanent, not ephemeral.—But, if processors “compete” to buy the ‘B’ quota shares for themselves, rather than B share harvest from fishers, competitive market behavior ceases.
- That the data received from processors was definitive.—However, this “data” presented confidentially to the NPFMC, without public review.
- That processors have “thin margins.”—By contrast, harvesters had testified that recent crab fisheries had resulted in losses for those with mean (average) catch, or less. Thin margins’ are certainly better than none
- That “processors will be hungry for all deliveries of crab, especially the crab delivered last.”—This statement ignores the impact of a fixed market share. To the first crab delivered is no different than the last—the processor receives exactly the amount of “A class” harvest for which he owns PQ. This for increased margins by relieving the processor of the need to compete based on price.

IFQs Result in Fewer Processors—Fallacy

The *Issue Paper, Council Action on Processor Shares*,” claims that,

“only 25 of the 67 pre-IFQ firms survived the harvester-only allocation of [sablefish] quota according to thorough analysis done by Washington State University. . . . Experience to date shows that harvester only allocation of shares results in fewer processors.”

IFQs Result in Fewer Processors—Fact

This is conclusion not supported by the “WSU study,” which showed new processors entering following the halibut IFQ or other real world experience.

- The study, itself, cautions that the ITQ allocations “may not be causal.”
- Attrition of processors in “open access” crab fisheries occurred at a similar rate during the same time frame.
- The NPFMC analysis shows 80 different processors operated in the *opilio* fishery during the same period as that of the WSU study.
- The Council crab plan qualified only 21 processors in the fishery.
- Processors fared better under the halibut/sablefish IFQ plan, than under either the “open access” fishery regime for crab, or in the NPFMC crab IPQ plan.
- The allocation of processor quota invites consolidation, it does not require that recipients actually process in the future.

Processing Quota = Legal Monopoly of Domestic Supply:

Processing Quota, as defined in the NPFMC crab plan, is presently prohibited under U.S. law. The prohibition occurs under terms of antitrust statute, and Congressional authorization of the crab plan would provide, intentionally or otherwise, exemption from current antitrust provisions. The specific nature of the exemption and the impacts that such exemption could be expected to produce has not been examined by the NPFMC in the rush to produce a report to Congress.

“AFA Coop Analogy”—Fallacy:

The State of Alaska document includes a one page *Issue Paper* titled “*Antitrust Issues*”, which states:

“The same anti-competitive issues that were brought up under consideration of the American Fisheries Act (AFA) are being raised under crab rationalization”

“AFA Coop Analogy”—Fact:

The AFA did not create a fixed market division between processors, as the crab plan does. The vessels were only allowed to enjoy the benefit of this catch history within the operation of a *cooperative*.

Vessels are required to form a cooperative with a specific processor, depending upon the deliveries of the vessel in the year prior to coop formation. A vessel may leave the coop and move to another, following a year in the “open access” fishery, reducing the amount of market share of one processor, and increasing the market share of the new processor.

In contrast to AFA, under the crab plan vessels are to receive a direct allocation of fishing history. As a consequence, processor-owned vessels will also receive a di-

rect allocation, whereas under the AFA processor-owned vessels could only operate in a rationalized manner if they were allowed to participate in a coop.

“Dooley Hall” and “Wild Claims”—Fallacy:

The *Issue Paper* on “Processor Shares” states,

“Immediately after AFA passage, many harvesters tried to get the Council to amend the AFA agreement. They did so under the Dooley-Hall proposal, using precisely the same rhetoric, like *company towns* and *surfs [sic] working for feudal lords*. There were all sorts of wild claims the processors would capture all the profits.”

“Dooley Hall” and “Wild Claims”—Facts:

The *Issue Paper* writer misses the very important balance that was achieved, and which constitutes the dynamic point about which the AFA shoreside agreements operate. The fears of the harvesters were genuine, and were justified.

Without a mechanism for harvester movement between AFA coops, harvesters would have been critically disadvantaged. The ability of a coop to collectively allocate some or all of that “10 percent” to effectively accommodate the movement of a vessel, allowing the vessel to transition without enduring the ‘open access’ year, had not yet been established. The precise role of ‘processor association’ with cooperatives had not been determined, and one of the issues was whether a processor could act, within the coop, to block such internal allocations.

The interplay of this collective 10 percent “open market” allocation and ability of vessels to move between cooperatives was a very important determinant in the balance that has been achieved under the AFA.

The Dooley-Hall proposal, which would facilitate freedom of movement of harvesters, was not rejected by the Council, it was tabled. This action created a potential sword, which remains in place, hung above the table. The *Issue Papers* do not recognize the finesse with which the Council resolved this particular difficulty.

There were also wild claims at the time by Scott Matulich, the processors’ favorite economist and author of the WSU study. He claimed that AFA as passed by Congress would cause Unisea to get out of business, because the AFA gave harvesters too much power. However, Unisea, an AFA processor, supported the removal of the AFA sunset, which suggests they are happy with the benefits the AFA gives them.

Antitrust Relates to AFA Coops—Fallacy

An antitrust issue that did arise under the AFA is related to coop formation. The *Issue Paper* “Antitrust Issues,” breezes past this:

“The 1934 Fisherman’s Marketing Act contains an explicit statutory exemption from the antitrust laws allowing fishermen to bargain collectively in price negotiations with fish processors. The fishermen are allowed to decide, as a group, on their bargaining position, an activity that would violate Federal antitrust laws without the exemption.”

“Since the processor provisions of the AFA had no anti-competitive effects, then the less restrictive processor elements included in the Council motion on BSAI Crab Rationalization should be viewed similarly.”

Antitrust Relates to AFA Coops—Fact

A Congressional Research Service memorandum [CRS *memo*] prepared at the request of Sen. Murray’s staff, references a court opinion which underscores the importance of the protections of the Fishermen’s Collective Marketing Act to harvesters.

In *United States v. Hinote*, 823 F. Supp. 1350 (S.D. Miss. 1993), the court, concluded that catfish processors could not take advantage of the antitrust exemption under the FCMA solely by purchasing or leasing some interest in a catfish farming operation. *Id.* at 1359. The court reasoned that if it were to come to the opposite conclusion,

“large integrated agribusinesses organized to market and sell agricultural products could exempt themselves from the antitrust laws by the simple expedient of purchasing and/or leasing some interest in a farming operation, no matter how de minimis the interest. Such a result, however, would undermine Congress’ express purpose in enacting both the Sherman and Capper-Volstead Acts”

While the “intent language” of Senators Stevens and Gorton, the makers of the AFA, indicated that processor owned vessels were intended to participate in the coops, the final Department of Justice letter ruling on the issue provided that the implicit exemption was by not a blanket one:

“footnote 6. Our conclusion that processor-owned vessels may participate in FCMA cooperatives under the AFA is therefore unlikely to lead to anticompetitive results. Nevertheless, to minimize the possibility of negative effects on the fishing industry, Congress included within the AFA several provisions designed to eliminate potentially adverse economic consequences. See, e.g., §§ 213(c)(1) (granting the North Pacific Council the authority to recommend conservation and management measures “that supersede the provisions of this title . . . to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by . . . fishery cooperatives in the directed pollock fishery”); see also 144 Cong. Rec. S12,708 (daily ed. Oct. 20, 1998) (statement of Sen. Murray) (“In the interest of ensuring that small, independent fishermen are the true beneficiaries of fishery cooperatives, the bill includes a number of requirements for fishery cooperatives in all three sectors which are designed to provide these small, independent fishermen with sufficient leverage in the negotiations to protect their interests.”). Thus, should shoreside processors in the BSAI fishery affiliate with catcher vessels for no purpose other than to engage in anticompetitive conduct under the umbrella of antitrust exemption, the AFA would appear to give the Council the authority to check such abuses.”

Crab Coops vs AFA Coops—Fallacy

An important feature of the potential legislation should not be hidden under the *Issue Papers* gloss:

“The Department of Justice has not found any anti-competitive effects in the division of . . . pollock allocations among AFA Coops. It is expected that the Department will view the crab plan in a similar light.”

The crab plan includes a provision for the formation of cooperatives of harvesters “in association with a processor.” This should not become a means of allowing processor owned crab vessels to join 1934 FCMA coops.

Crab Coops vs AFA Coops—Fact

It is clearly evident that processor-owned vessels already enjoy the benefits of vertical integration. Since these vessels are also directly allocated their catch history under the crab plan, there is no necessity for the processor owned vessels to participate in the crab plan coops.

There should be no exemption, direct or implied, granting processor owned vessels participation in crab coops.

Antitrust Issues Under Crab—Fallacy

There are other anti-trust issues that are unique to the crab plan. The *Issue Papers* radically understate the anti-competitive effects of the action that the NPFMC is recommending to Congress.

Antitrust Issues Under Crab—Fact

Among the issues ignored, is the manner in which the NPFMC crab plan creates a horizontal division of the entire market for the domestic production of harvest vessels of snow crab, and more than 97 percent of the domestic production of harvest vessels of king crab. This type of horizontal division of the market would represent a *per se* violation of the Sherman Act, under existing law, if it were not exempted by congressional action. This was never an issue under the AFA.

Authority to Give Processors Antitrust Exemptions—Fallacy

The *Issue Paper* on “Antitrust Issues” concludes:

“If Congress says yes to the Council’s crab rationalization plan, this is a non-issue.”

Authority to Give Processors Antitrust Exemptions—Fact

*Congress could enact legislation that would exempt the NPFMC from prohibitions on almost any otherwise illegal activity. The question is, **not whether** Congress can, **but why** should Congress do such a thing?*

This is certainly true that:

- It is within the power of the NPFMC, as a Federal advisory body, to recommend a program that would otherwise be prohibited.
- It is within the power of Congress to provide this exemption.

If it “says yes,” then Congress will have enacted legislation which provides an implied antitrust exemption allowing BSAI crab processors:

- to divide up the market,

- to consolidate control over that market to a single entity,
- despite provisions of the Sherman Act and other antitrust statutes.

It is that this power to reverse the present antitrust protections that is of concern. If Congress says “yes” without a more rigorous examination of the issues, the results could be a irreversible disaster for harvesters, communities, and the public.

The “*Antitrust Issues*” *Issue Paper* states that there is no “closed class” of processors [as is recognized to exist, under the AFA] because new processors can “purchase ‘open delivery’ B shares or allocated shares from a qualifying processor.”

No Closed Class of Processors?—Fact

This is a semantic device word play. The crab plan does result in a closed class relative to A shares.

- Under the NPFMC crab plan, as in the AFA, new entrants to the processing sector must purchase a “right” from a “closed class” of processors in order to buy “A share” deliveries. In the AFA, membership in the ‘closed class’ does not guarantee market share.
- In the NPFMC crab plan, closed class (“qualified”) processors would be gifted with permanent market share, due to participation in processing activity during a very narrowly defined qualifying period.
- The crab plan is more restrictive upon new entry of processors, because the market share, as well as the right to process, must be acquired from ‘qualified’ processors.

The “open delivery” B shares referred to as source of product for “new” processors. It is true any processor (except catcher processors) can legally purchase B share harvests. *However, B share fail to represent a viable basis for a new processor to enter the fishery for several reasons :*

- This is a 10 percent market share segmented into more than 250 pieces, in each of the major fisheries.
- Many of these pieces are already in control of the “closed class” of processors that will receive Processing Quota under the plan.
- Processors are allowed, under the plan, to purchase and control B shares.
- B shares are intended to be used as leverage to obtain a “fair price” from the processor for A share deliveries.
- B shares are intended to enhance deliveries to communities such as Kodiak.

No Direct Linkage of Harvester to Processor?—Fallacy

The “*Antitrust Issues*” *Issue Paper* argues that the crab plan is less restrictive than AFA for harvesters, stating:

“there is no direct linkage between fishermen and processors (fishermen are free to deliver to any processor holding processor shares).”—and that the plan, “assures multiple processors in each crab fishery,”

No Direct Linkage of Harvester to Processor?—Facts

- NPFMC has provided a system that is ultimately even more restrictive than the AFA.
- The AFA provides specific provisions to accommodate harvester movement from one processor to another.
- The crab plan requires harvesters to match quota shares with a processor for 100 percent of the harvester’s “A” designated quota shares.
- The bar to movement is that a harvester wishing to move must identify a processor willing to discharge another harvester already delivering to that processor, in order to “free up” Processing Quota shares, to accept delivery.
- The crab plan allows processors to transfer PQ freely, without effective caps upon the consolidation of quota shares to a processing facility. Thus, a harvester may be directed by the terms of a processing quota share trade, to deliver to a processor, without the harvester having choice.
- The Council action, in fact, allows consolidation of control over all processing to a single entity.

Consolidation Rules Ensure Multiple Markets?—Fallacy

The *Issue Paper*, “*Council Action on Processor Shares*,” states:

“The Council instituted caps on the amount of consolidation that may occur among the processors. The consolidation rules are far more restrictive than

what would be required under the normal antitrust laws, and they are intended to ensure multiple market opportunities.”

Consolidation Rules Ensure Multiple Markets?—Facts

The disparity between this unsupported assertion, and the reality of the mechanism of the crab plan, was enough to cause the *Alaska Fishermen’s Journal* to write an editorial titled: “*Earth to Council: Abort! Abort!*”

Dealing with the fallacies of this claim in the Issue Paper requires a full review of the Analysis and the actual options selected by the Council.

The NPFMC Analysis of Antitrust Issues—and the NPFMC Motion:

The Analytical Document prepared for NPFMC consideration of the program developed in the Council motion contains the following brief reference titled: “Anti-trust Issues Related to the Issuance of Processing Shares and Regionalization of the Fishery.”

“Generally speaking, congressional action will be needed to resolve any potential anti-trust issues associated with the regionalization and processor share provisions. Antitrust issues, however, could also arise in a harvester IFQ program, if constraints are not placed on consolidation of QS. These issues are discussed with more specificity in the appropriate sections below.”

What are “the appropriate sections below?”

- the section on QS ownership caps and excessive share issues (3.4.1.2),
- the section on processor caps (3.4.2.6),
- the discussion of regionalization (3.6), and
- the discussion of competition in the fisheries (3.16).

Section 3.4.1.2 Ownership and Use Caps

This section discusses the role of ownership and use caps in regulating the degree of consolidation of harvester shares (QS, in the analysis):

“As noted in the NRC study ‘Sharing the Fish,’ ownership and use caps are generally favored as a means to prevent excessive shares. . . .” Further on, “The options for capping the ownership of QS [in the] Bristol Bay red king crab, the BS opilio, the BS bairdi [crab fisheries] . . . are 1, 5 and 8 percent of the QS pool. These caps would limit consolidation of the fishery to 100, 20, and 13 QS owners, respectively, if all QS holders own quota amounts equal to the cap.”

The Council’s discussion of harvest caps cited the necessity to start with “very conservative guidelines.”

- NPFMC settled the “ownership caps” for these fisheries at 1 percent of total allocated.
- “Use caps” allowing additional quota to be leased, provide that a total “use” (owned and leased) of 2 percent of QS.
- However, processors are also allowed to own up to 5 percent of the fishing quota in a given fishery, despite that all other owners are restricted to the 1 percent caps earlier referenced.
- This “control on vertical integration” establishes that processors are entitled to a larger portion of fishing quota than any other QS holders.

Section 3.4.2.6 Consolidation

This section discusses the role of ownership and use caps in regulating the degree of consolidation of processing shares

“Caps on ownership and use of processing shares could be used to prevent consolidation of market power in a few firms. These caps might be favored as a means to ensure competition in the processing labor market. In addition, share concentration could influence the market power of processors with respect to harvesters. Harvesters are concerned that if processing shares become consolidated in the hands of a few firms, those firms could have the ability to control the ex vessel price of crab. In addition, caps on ownership could be used to facilitate a market for processing shares, contributing to entry of processors to these fisheries.”

A footnote to the analysis states:

“Ownership and use caps, together with an allocation of processing shares, are the only options that would guarantee a minimum number of participants in the processing sector.”

Another footnote to the analysis states:

“Some of the companies listed in Appendix 3–3 have common owners . . . Depending on the rules chosen for determining ownership for purposes of applying caps, these companies with common owners might be considered a single entity.”

Application of the Rule

The NPFMC action provides ownership and use caps that do not guarantee a minimum number of participants in the processing sector.

The Council didn’t choose the rule that would implement caps that “apply individually and collectively.” The NPFMC chose that “No ownership [is] to exceed 30 percent of the total PQS . . . at the company level.” In general, this allows an individual entity to own 60 percent of the total PQS pool, provided the ownership is held in at least two separate companies.

Use Caps

With respect to processing “use” caps, the NPFMC motion applies three rules:

- “In the Northern Region, annual use caps will be at 60 percent for the *opilio* crab fishery.”
- “50 percent of the WAI IPQ brown king crab QS shall be processed in the WAI region.”
- “Custom processing would continue to be allowed within this rationalization proposal.”

Taken together with the ownership cap rules, this means:

- While “ownership” may not exceed 30 percent of the total PQS, this calculation is made at the “company level.” Thus, provided companies are not “merged,” an individual may acquire ownership of ALL PQS.
- With only two exceptions and there are no “use caps” on IPQS. Thus, all PQS may be processed in one facility, whether or not “companies” are owned in common.
 - For the Northern Region *opilio* crab fishery, there must be at least two processing companies to which harvesters may sell crab.
 - However, these companies, may be owned by the same individual.
 - Also, these companies may also be allowed to operate from the same processing facility, if amounts delivered above the “60 percent use cap” are processed according to “custom processing” agreements.
- For the Western Aleutian Islands IPQ brown king crab fishery, 50 percent of the catch must be processed in the region. This IPQ could be processed by the same company.

Other Sections of the Council Analysis

Section 3.16, particularly 3.16.2 which contains a brief survey of the literature of conflicting accounts of competitive impacts projected by economists. It includes a summary of a discussion paper prepared for the NPFMC by economists Milon and Hamilton. They conclude that:

- Segmentation of the market limits harvester negotiating power, and
- PQs “could allow processors to capture efficiency gains realized by the harvesting sector since harvesters would be required to deliver harvests to processors holding processing shares.”

Are Harvesters Willing to Accept Processor Quota as the Price of IFQs?—Fallacy:

In the *Issue Paper*, “Council Action on Processor Shares,” the writer asserts that the Council “asked crabbers which they would prefer? Answer: the Council motion is preferred to open access.”

Are Harvesters Willing to Accept Processor Quota as the Price of IFQs?—Fact:

This recollection is inconsistent with the tapes of record.

- The Council motion had not yet been made at the time public comment was taken.
- Only one of four harvester associations endorsed Processing Quota.

The C.R.A.B. Group’s testimony to the Council opposed processing quota and supported rationalizing the fisheries, that we represented nearly half of the crab har-

vesters, and that the Council decision would determine whether opposition to Processing Quota would grow. Opposition to Processing Quota is growing.

An Unrecognized Conflict of Interest by the State of Alaska

Nowhere in the praises heaped upon the crab plan in the *Issue Papers* is there a hint of a direct financial interest in the outcome by the Alaska Department of Fish and Game [ADF&G]. Perhaps it is through a lack of self-consciousness by the author of the *Issue Papers*, but an undeclared conflict of interest is glossed over. Consider the NPFMC motion:

“Section 5, Program Elements, Option 5. A proportional share of fees charged to the harvesting sectors and processing sectors for management and enforcement of the IFQ/IPQ program shall be forwarded to the State of Alaska for use in management and observer programs for BSAI crab fisheries.”

This is likely to be a sum considerably exceeding the amount presently authorized by the Alaska Legislature. It is certain that ADF&G needs the money. The fishing industry has supported the budget requests of ADF&G to the Alaska Legislature for years, only to experience debilitating cuts, year after year.

Part IV—Our Request to Congress

The Council has recommended two distinct programs to Congress in a single package, a harvester IFQ and a Processor Quota program. However, the two programs are not equally well supported by the record.

The Harvester Program

After a day-and-a-half of discussion, the NPFMC chose a suite of options that determined the harvester elements of the crab plan. These elements were based upon years of experience with the halibut/sablefish plan, were selected from a broad array of possibilities, and included provisions that would mitigate each of the impacts noted by the Select Panel in “Sharing the Fish” including options for skippers and communities, and the prevention of accumulation of excessive shares of fishing quota.

The Processor Program

After discussions ranging from little to none, the NPFMC chose a suite of options that determined a Processing Quota provision. There were no real alternatives presented, there was no effective cap on consolidation, no practical experience except for tenuous analogy to provisions of the American Fisheries Act, theoretic guidance based on highly controversial and unproven assertions, and no demonstrated understanding of the anti-competitive aspects of the provision. The NPFMC crab plan has been billed as bold step into new territory. It is instead, a reactionary slide into a system that has not been seen in Alaska since the Seward Purchase—a State sanctioned monopoly of fisheries resources.

Is the Ultimate Question “Processors Shares or Nothing?”

Finally, consider the question actually asked of crabbers: “Which would you prefer—Processor Quotas, or nothing?” This is an industry that is in collapse, and the lives, the vessels and the homes of many harvesters are right there on the line. Was this not really the question of Solomon was asked to judge?

The *Issue Papers* claim that the baby was cut in thirds. Instead, the NPFMC has given the whole baby to the processors, who declared they had the power in Congress to block *any* programs, no matter the cost to life or resource, to have their way.

Conclusion

- We ask Congress to reject the Council’s recommendation to legalize Processor Quotas and by implication undo the antitrust provisions of existing statutes.
- After rejecting Processor Quotas, we hope Congress will use its wisdom to judge the rest of the Council’s program to end the deadly race for crab, to improve safety and to improve conservation of the resource, on its merits.
- We ask that Congress allow and encourage the Council to develop a rationalization plan for crab that doesn’t include Processor Quotas.

Senator STEVENS. Our next witness is Frank Kelty, the Natural Resources Manager of the City of Unalaska.

Mr. Kelty?

**STATEMENT OF FRANK KELTY, RESOURCE ANALYST,
CITY OF UNALASKA**

Mr. KELTY. Good afternoon, Mr. Chairman, Members of the Committee. Thank you for inviting me to testify before the Committee.

My name is Frank Kelty. I am the Resource Analyst for the City of Unalaska. With me from Unalaska today—we have traveled, I think, it must be about 7,000 miles to get here—is the Honorable Mayor Pam Fitch, city council members Marcort, Meeks, and Mr. Graves, and also our City Manager, Chris Latik.

Previously, I worked for 30 years in the Alaska seafood industry as a crab plant manager for two operations in Unalaska. I also served as the city's Mayor for 10 years. The City of Unalaska strongly supports the Bering Sea crab-management plan because it recognizes the investment of all participants in the Bering Sea crab fishery, including harvesters, processors, and communities. My oral testimony will focus on the following issues—community dependence, safety, and the lessons we have learned from AFA.

Mr. Chairman, we have a crab resource and industry in the Bering Sea that is in trouble. That is why we are here today. The fisheries in the Bering Sea have excess harvesting and processing capacity, resource conservation and management problems, lack of economic stability for harvesters, processors, fishery-dependent communities, as well as major safety concerns. The crab plan is strongly supported by the Cities of Unalaska, Akutan, St. Paul, and St. George. These communities process in excess of 85 percent of the king and opilio snow crab of the Bering Sea. And I might like to point out that City of St. Paul passed one of the first resolutions over a year ago in support of this plan.

Mr. Chairman, I would like to emphasize the following point. The communities that have been dependent on crab are, in fact, supporting the plan. The plan, Mr. Chairman, guarantees that the vast majority of the crab resource will stay onshore in Alaska. I repeat, this plan is a shore-side plan that guarantees the resource to Bering Sea communities. This has long been your stated goal for the Alaska fisheries, and it is implemented in this crab plan.

The North Pacific Council was extremely careful to recognize historic dependence and to protect our stake in the fisheries. Alaskan communities are protected through a requirement that 90 percent of a processor's history stays in the community within the region that they earned it and assures us access to the resource during good times and bad.

The City of Unalaska has seen firsthand the benefits of a rationalized fishery under the American Fisheries Act. The race for pollock in the Bering Sea has stopped. We have seen increased economic stability for pollock harvesters, processors, and fishery-dependent communities, as well as longer fishing seasons that benefit both employment in the industry and in the community, improved resource management, new product development, improved revenue streams for the community, and increased safety.

As many of you know, the Bering Sea crab fishery is the most dangerous in the world. As a crab plant manager, I cannot count the number of times I have had vessels return to Unalaska for crab unloading in January and February, March, that were covered in a foot of ice or more. Sometimes the boats returned to port having

had two or three pilothouse windows blown out by rogue waves that destroyed all their electronics. Fortunately, the skipper can navigate blind for 2 days. I have had to make phone calls to family members to tell them that their loved ones were lost at sea during the crab season.

This crab plan will stop the race for fish by giving harvesters the flexibility to pursue crab through longer fishing seasons. Harvesters will be able to base their decisions on accommodation of market, fishing, and weather conditions, rather than face the pressure to fish in bad weather because of such compressed seasons, as is certainly the case. There is no question in my mind that this plan will help save lives and reduce injuries.

As you know, there is a small, but vocal, opposition from industry participants and community, most notably the City of Kodiak. Their opposition is primarily based by the plan's allowance for processing quota shares and on the years used to determine processing and fishing history under the plan. These opponents, by and large, reduced their participation in the crab fishery some time ago rather than remain in the fishery, like Unalaska and others that ride through the ups and downs. They made their choice of their own free will and opted to diversity into other fisheries, fisheries that they have been successful at and have benefited from. Yet now they ask to be held harmless at the expense of those who kept their commitment to the crab fishery.

The Council has ensured that 10 percent of the fishery will remain open access, so they will have an opportunity to participate in the fishery. And the harvesting of processing shares that they do hold from the late 1990s will have significant value.

The Council, after careful deliberation, ratified the plan by a unanimous vote—ratified the plan by a unanimous vote—and followed up with the adoption of strong community-protection measures. We believe that the final plan treats Kodiak and a few other opposing communities fairly.

In summary, Mr. Chairman, we believe that this plan was crafted by the Council in a deliberate, balanced, and open fashion that has taken almost 4 years to complete. The plan has measures that protect and enhance economic activity for both harvesters and processors that have invested hundreds of millions of dollars in their operations in Bering Sea communities. So I would encourage you to move forward with legislation to implement its provisions, and in a timely manner.

Thank you for allowing me to testify, and I look forward to answering any questions you may have.

Senator STEVENS. Thank you very much.

[The prepared statement of Mr. Kelty follows:]

PREPARED STATEMENT OF FRANK KELTY, RESOURCE ANALYST, CITY OF UNALASKA

Mr. Chairman, my name is Frank Kelty, and I am the resource analyst for the City of Unalaska. Unalaska strongly supports the Bering Sea Crab Management Plan developed by the North Pacific Council. We have submitted a written statement and supporting materials for the record. My oral testimony will focus on the following issues: (1) community dependence; (2) safety; and (3) the lessons we have learned from the American Fisheries Act.

Mr. Chairman, we have a crab resource in the Bering Sea/Aleutian Islands that is in trouble, and that is why we are here today. The fisheries of the Bering Sea/

Aleutian Islands have excess harvesting and processing capacity; resource conservation and management problems; lack of economic stability for harvesters, processors, and fishery-dependant communities; as well as major safety concerns.

Community Dependence

The crab plan is strongly supported by the cities of Unalaska, Akutan, St. Paul, and St. George. These communities process in excess of 85 percent of the king and opilio crab in the Bering Sea. Opilio is also referred to as snow crab.

Mr. Chairman, I would like to emphasize the following point: the communities that have become dependent on crab are, in fact, supporting the plan. The plan, Mr. Chairman, guarantees that the vast majority of the crab resource will stay on-shore in Alaska. I repeat; this plan is a shoreside plan that guarantees the resource to the Bering Sea communities. It cannot be shifted to offshore catcher-processors, and it cannot be taken out of state for primary processing. This has been your long stated goal for the Alaskan fisheries, and it is implemented by this crab plan.

The North Pacific Council was extremely careful to recognize historic dependence and to protect our stake in the fisheries. Unalaska believes that the plan itself is a community protective measure because it assures that 90 percent of the processors' history stays in the community within the region and assures us of the resource during good times and bad.

Community opposition to the plan is coming from Kodiak. They feel that the plan will impact their revenues, local processing plants, and the 35 resident crab vessels. Kodiak was a major player in the crab fisheries of the Bering Sea, but that was over 20 years ago, before the development of the processing plants in the Bering Sea communities. Between 1997 and 1999 (the qualifying years), Kodiak's historical landings from the Bering Sea were very small, at less than 1 percent for opilio snow crab and 6 percent for Bristol Bay red king crab.

Kodiak is 600 miles from Unalaska, and we are another 200 miles from the king crab fish grounds and further yet from the major opilio grounds. That distance means many days of running time to take crab back to Kodiak. Harvesters have to worry not only about weather, but deadloss of crab at unloading due to the length of time that the crab has been on board the vessel.

Kodiak's vessels are protected under this plan. Because a good harvesting history assures they will have great value, and Kodiak's processors are granted their processing history. Kodiak's processing companies will be able to compete for an additional ten percent of the resource that has been set aside as open access. We believe that Kodiak has been treated fairly by the North Pacific Council.

The City of Kodiak has requested changes to the plan to give their community a greater stake in the fisheries. The crab allocation is a zero sum game. Any increased allocation to Kodiak comes out of the fish to be processed by Bering Sea communities that have a far greater dependence on the crab resources of the Bering Sea.

AFA

Unalaska has seen first hand the benefits of a rationalized fishery. Under the American Fisheries Act, which rationalized the Bering Sea Pollock fishery and is a far more restrictive plan than the BSAI crab plan, the race for fish was stopped. We have seen increased economic stability for harvesters, processors, and fishery dependant communities, as well as longer fishing seasons that benefit both employment in the industry and the community. We have seen improved resource management, new product development, and increased safety. With a rationalized Bering Sea/Aleutian Island crab fishery, we will see many of the same benefits in all sectors of the Bering Sea/Aleutian Island crab industry.

Safety

I have worked in the crab industry for over thirty years, and I know that Bering Sea crab is the most dangerous fishery in the world. I cannot count the number of times I have had vessels return to Unalaska for unloading covered in a foot of ice in January or February. Sometimes the boats have returned to port having had two or three pilothouse windows taken out by rogue waves that destroyed all of their electronics, forcing the skipper to navigate blind for two days and barely making back to port. I have had to make phone calls to family members to tell them their loved ones were lost at sea during the crab fishery. This crab plan will help put a stop to that madness by making the fishery safer. The rationalized Pollock fishery in the Bering Sea has worked wonders for safety. Now, the Pollock fleet can wait out major storms. The North Pacific Crab Plan affords this same safety net to crab fishermen.

In summary, Mr. Chairman, we support the public process that this issue has gone through with the North Pacific Council, and we support the council process.

This plan has the support measures that protect and enhance economic activity for crab industry and the communities of the Bering Sea. The North Pacific Council's Crab Rationalization Plan is vital to the long-term stability of the communities of the Bering Sea that have become dependent on this resource.

Thank you for allowing me the opportunity to testify.

PREPARED STATEMENT OF FRANK KELTY, RESOURCE ANALYST,
CITY OF UNALASKA, ALASKA

Mr. Chairman and Members of the Committee:

For the record, my name is Frank Kelty; I am the Resource Analyst for the City of Unalaska. Previously, I worked in the Alaska Seafood industry for 30 years in Unalaska, Alaska, as a manager for two processing companies running crab operations. I also served the community of Unalaska as an elected official for 19 years, until December of 2000, when I resigned to work as Resource Analyst. The last 10 years of my time on Council, I served as the Mayor of Unalaska. I'm here today to testify on behalf of the City of Unalaska in support of the North Pacific Fishery Management Council's Bering Sea/Aleutian Island Crab Rationalization Plan.

Included in your packet of information is the City of Unalaska Resolution 2003-27 that was passed unanimously by the Unalaska City Council in support of North Pacific Council's Bering Sea/Aleutian Island (BSAI) Crab Rationalization plan. Also included are resolutions and letters from other Bering Sea communities that support the plan. Those communities include the City of Saint Paul, City of Saint George, and the City of Akutan. These communities, as well as Unalaska, process in excess of 85 percent of the King and Snow Crab harvested in the Bering Sea Crab fisheries. The City of Unalaska is not only the largest crab processing community in the State of Alaska, but the nation's number one commercial fishing port as well.

The BSAI rationalization plan has been developed in a very open process. After three years of committee meetings and discussion by harvesters, processors, community representatives, and members of the public, came two years of intense discussion, analysis, and development by the North Pacific Council, its staff, and the council's industry advisory panel, with assistance from NMFS, ADFG, and independent economists and fishery consultants. The plan was finally adopted by a unanimous vote of the North Pacific Council 11-0 in June of 2002.

The current state of the Bering Sea crab fisheries is poor at best. Included with the information in the packet, I have provided a spreadsheet created by the Alaska Department of Fish and Game that reflects the recent history of the Bering Sea Fisheries covered under this plan. As you can see, many of these fisheries have been closed for years, and three of them have been under rebuilding plans for the many years. The ones that have been open have had very small harvest quotas and a very limited amount of fishing time, with a large number of participants in these un-rationalized fisheries.

This situation has led to economic instability in the crab industry as a whole and has caused major revenue shortfalls for many of the fishery-dependent communities in the Bering Sea/Aleutian Island area, especially smaller communities such as Saint Paul and Saint George that depend almost exclusively on the harvesting and processing revenues generated from the crab fisheries of the Bering Sea. With the continued race for fish in the BSAI crab fisheries, we have witnessed the continuous struggle that the State of Alaska fishery managers have in managing an un-rationalized fishery. A good example is the fact that the 2003 Opilio Snow Crab fishery might not have opened had a new regulation from the Alaska Board of Fish not been granted to enact a further reduction in the number of pots that harvesters could use during the season. Without that reduction in fishing gear, we may not have had a season, which would have been devastating to the harvesters, processors, and fishery-dependent communities.

With the gear reduction regulation in place, we had a season that lasted ten days, and a fleet of almost 200 vessels harvested 26 million pounds of snow crab. This October, we will once again have another derby-type crab opening on the Bristol Bay Red King Crab fishery. It may last 4 or 5 days with a limited amount of harvest quota. This fishery will attract well over 200 vessels. As a consequence, for the 2003 crab fishing season, the majority of the Bering Sea Crab fleet will have a total of 14 or 15 fishing days. This type of scenario has been ongoing on for years. I think this points out the crisis situation this industry is in right now and why the Bering Sea Aleutian Island Crab rationalization plan needs to move forward and be implemented as soon as possible.

This plan, which the City of Unalaska supports first and foremost, recognizes the investment of all participants in the Bering Sea crab fisheries, including the har-

vesters, processors, and communities. My community has seen first hand the benefits of a rationalized fishery with Bering Sea Pollock fishery under the American Fisheries Act. Under (AFA) the race for fish was stopped. We have seen a reduction in the size of the fleet, as well as longer fishing and processing seasons that benefit both employment in the industry and the community. It has also provided economic stability to harvesters, processors, fishery-dependent communities, and support sector business.

Under AFA, we have seen improved resource management, new product development, and increased safety for the fleet. Included in the packet of information provided, you will see some revenue graphs that point out the increase in many of the City of Unalaska fishery-related revenue streams since AFA was enacted. With a rationalized BSAI crab fishery, we will see many of the same benefits in all sectors of the industry. The following is an overview of some of the main components of the plan that we support and that need to be pointed out.

Harvester Sector

Harvesters would be allocated quota shares (QS) in each fishery rationalized by the program. Harvester shares will be allocated in two classes of shares: Class A shares at 90 percent, and class B shares at 10 percent. Class A shares carry the regionalization tag and would have to be delivered to the designated region. Class A shares of crab would have to be sold to any processor in that region who has processor quota shares. The 10 percent, class B shares do not have any regionalization tag and can be sold to any processor in any region.

Quota shares and IFQs would both be transferable under the program, subject to limits on the number of shares a person may own or use. Leasing of quota shares may be prohibited, except within a cooperative, after the first five years of the program. The transferability is necessary to reduce fleet size and remove capital from the fisheries under this plan. The limit on leasing of QS or sale of IFQs by persons not in cooperatives is intended to create an incentive for cooperative membership.

The Captains share allocation of 3 percent quota shares are open shares for the first three years of the program and will be reviewed by the North Pacific Council, which will decide whether to make the shares either class A or a class B designation. A crewmember crew-loan program will be developed to assist crewmembers' entry into the crab fisheries.

This program would permit harvesters to form voluntary cooperatives with one or more processors holding processing quota shares (PQS). Cooperatives are intended to facilitate efficiency in the harvest sector by aiding harvesters in coordinating harvest activities among members of the cooperatives and deliveries to processors. A minimum membership of four unique QS holders would be required for cooperative formation. Under AFA, Pollock cooperatives have so effectively coordinated the harvest that less than 1 percent of the TAC is un-harvested. We have also seen formation of profit sharing agreements between harvesters and processors under AFA that have been very successful in maximizing revenues for both sectors. I believe we would see the same types of programs under a rationalized crab fishery.

Harvesters also have a binding arbitration program in place, which will be used to settle price disputes between processors.

Processing Sector

The allocation of processor shares is easily the most controversial part of the plan. However, their contribution and investments in the BSAI crab fisheries cannot be ignored, as they are the economic anchor for fishery-dependent communities in remote locations in the Bering Sea area. Their investments in Unalaska are in the hundreds of million of dollars. They provide employment and markets for a wide variety of harvesters in different fisheries, and the importance of the revenue they generate in the millions of dollars annually for both for local governments and the State of Alaska cannot be understated.

The processing sector will be allocated PQSs in each fishery rationalized by the program. These annual allocations of processing privileges are referred to as Individual Processing Quotas (IPQs). IPQs would be issued annually for 90 percent of the allocated harvests corresponding to the 90 percent allocation of class A harvester shares. Leaving the remaining 10 percent of processing unallocated and, therefore, deliverable to any processor is intended to strike a balance of bargaining power between the harvesting and processing sectors. In addition, this 10 percent unallocated processing amount would allow for new entry to that sector.

PQS allocations would be based on processing history during a specified qualifying period for each fishery. A processor's allocation in a fishery would be equal to the processor's share of all qualified processing in the qualifying period. All allocations will be made to the buyer of record on ADFG fish tickets, by the State of Alaska

Commercial Operators Annual report, and by fish tax records. This rule reflects the intention to allocate shares to the entity that purchased the crab and funded the processing activity.

Processor shares would be transferable, including leasing of PQS, subject only to use and ownership caps, and restrictions that apply during the two-year cooling-off period.

Ownership of PQS will be limited to 30 percent of the outstanding PQS in a fishery. An exception to this would be in the Northern Region where PQS shares in the Opilio Tanner fishery would be capped at 60 percent due to the limited number of processors in that region.

Community Protection

This is a very important part of the crab rationalization plan. I maintain that it shows that the importance of the processors having quota shares is their designation by region. The most important part of the community protection provision is the regional designation of shares, which will apply to processor allocations north of 56° 20' N Latitude. The South region will be all areas not included in the North region, and all the corresponding 90 percent of the harvest allocations, distributing landings and processing between specific regions. Included in the handouts, are spreadsheets and graphs that show landings, State of Alaska fish tax information for Opilio Snow crab between the North and South regions, and community designations. I have also included landings by community and percentages of landing over a four-year period for Bristol Bay Red King Crab. These are currently the two major Bering Sea fisheries. This information clearly shows the connection between the communities of the Bering Sea and the dependency of these communities on the crab fisheries of this area, and it shows the importance of the processing plants in their communities. It also points out the lack of dependency by some communities, such as Kodiak, which is located in the Gulf of Alaska, over seven hundred miles from the nearest Bering Sea crab fishery.

For the first two years of the plan, a cooling-off period is currently in place. During this time, the processing quota earned in a community may not be used outside of that community.

First Right of Refusal options apply for communities with at least 3 percent of the initial PQS allocation in any BSAI fishery, based on history in a community. Exception will be made for those communities that receive a direct allocation of any crab species; currently, the only exception is Adak. This right allows qualified communities, or community groups, and CDQ groups a first right of refusal to purchase processing quota shares that are based on the original processing history of the community.

Safety

This is one area under a rationalized fishery in which we will see major improvements. Fishing in Bering Sea Crab fisheries, as many of you know, has been labeled the most dangerous profession in the Nation. Approximately 25 fishermen lost their lives in the Bering Sea during the 1990s. This rationalization plan will provide a safer fishery in much the same way as we have seen in the Halibut and Sablefish IFQ fishery and the AFA rationalized Pollock fishery in the Bering Sea. In my previous employment in the crab industry, I saw first hand the havoc that the Bering Sea can wreck on people and on vessels in an un-rationalized fishery. I cannot count the times I have had vessels return to Unalaska for unloading covered in a foot of ice in January or February. Sometimes they have returned to port having had two or three pilot house windows taken out by rogue waves, and had all their electronics and navigation gear destroyed and had to hand steer for two days, barely able to make it back to town. I only had to deal with the ultimate tragedy once, and that was enough for a lifetime. Having to deal with the tragedy of a vessel lost with all hands, and having to tell loved ones and friends that their family member or friend will not be coming back was one of the toughest things I have ever had to deal with in my life. The improvement that we will see in safety with a rationalized fishery is something we cannot put a dollar value on, and we should never forget that.

There are those who oppose this plan. Many of them do not have any involvement with the crab fisheries of the Bering Sea, but are worried that sometime in the future elements of this plan could impact their fishery. We heard the same concerns during the implementation of the American Fisheries Act (AFA) by the same folks that weren't involved in the Pollock fishery, that it would cause problems for them in their fisheries, but it has never happened. There are crab harvesters that also do not support the plan. Many of their concerns might be due to the qualifying years that are in the plan. Some vessels do not have very much poundage or history dur-

ing those years. These people might hope to keep the derby fisheries going, thinking they may be better off financially. We have heard the concerns that with processor shares, their ex-vessel prices will be impacted. However, under AFA Pollock co-operatives we have not seen that. What we have seen is ex-vessel prices increase for the harvesters with profit sharing agreements and other incentive programs.

We also have strong opposition to the plan from Kodiak. They feel the plan will impact their revenues, their local processing plants, and the 35 vessels that are home ported there. At one time, Kodiak was a major player in the crab fisheries of the Bering Sea, but that was over 20 years ago, before the development of the processing plants in the Bering Sea communities. Between 1997 and 1999, which were the qualifying years in the plan, Kodiak historical landings from the Bering Sea are very small, at less than 1 percent for Opilio Snow crab and 6 percent for Bristol Bay Red King crab. That does not show much dependency on the major crab fisheries in the Bering Sea, especially when compared to the communities located in that area. This is due, in part, to the distance they are from the crab grounds of the Bering Sea.

Kodiak is six hundred miles from Unalaska, which is another 200 miles from the King crab fishing grounds and further yet from the major Opilio snow crab fishing grounds. That distance means many days of running time to take crab back to Kodiak. Harvesters have to worry not only about weather, but deadloss of crab at unloading due to length of time that the crab has been on board the vessel. In addition, they have to deal with the fishing gear that they may have left on the fishing grounds, and they have increased cost of expenses just to make that run.

I believe their current historical crab landings can be met under this plan through the processor quotas shares that the local processing plants will receive and through the open access 10 percent share of the quota for the harvesters that can be delivered to any processor in any community.

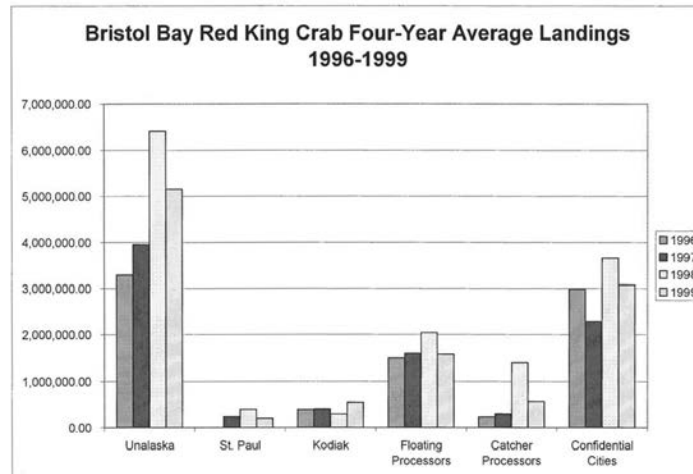
Unalaska supports this rationalization plan, as do other communities located in the Bering Sea/Aleutian Islands, and the crab processors and many of the harvesters that fish these fisheries. We believe that the rationalization plan as proposed will address many of the serious concerns facing all sectors involved in the crab industry of the Bering Sea/Aleutian Islands. In Unalaska, we will see many of the same benefits in a rationalized crab fishery that we have seen in the rationalized AFA Pollock fishery. We support the public process that this issue has gone through with the North Pacific Fishery Management Council, and we support the council process. This plan has the support measures that protect and enhance economic activity for all sectors in the community of Unalaska. There is no doubt that everyone realizes that our mainstay for continued success as a City is linked to the fisheries from which we gain economic resources.

In closing, I would like to read a paragraph from North Pacific Council Chairman Dave Benton's August 5, 2002 letter to Congress that was attached to the North Pacific Council report to Congress on the Bering Sea and Aleutian Islands Crab Rationalization Program:

"This program is certainly not without its controversy. The adoption by the Council of processing quota shares as a fundamental part of the program is probably the most controversial aspect of the program. However, the Council believes, as is reflected in its unanimous vote, that the crab fisheries in the Bering Sea/Aleutian Islands require this innovation, comprehensive management approach to adequately recognize and protect the interests of all participants. It recognizes all components of the fishery as a balanced, inextricably linked system, rather than individual, competing components. It may not be the appropriate model for other fisheries. We do believe it is the appropriate management approach for this fishery, and we respectfully submit that Congress should allow for such regionally tailored approaches in the management process. All Councils need such flexibility as we consider development of rationalization programs for

other fisheries, for the benefit of all user groups, and to sustain our precious fisheries resources for the Nation.”

Thank You.



Aleutian Islands and Bering Sea commercial fishery data 1996/97 - 2002/03.

Area	Fishery	Season	Vessels	Harvest ^a (pounds)	CPUE ^b	Season Length (days)
Aleutian Islands	Red king crab	1996-1997		Fishery Closed		
		1998	3	5,900	7	257
		1999		Fishery Closed		
		2000	1	76,792	23	Petrel Bank survey
		2001	4	153,961	32	Petrel Bank survey
	Brown king crab ^c	2002	33	505,642	18	2
		1996	14	3,262,516	6	116
		1997	13	3,501,054	7	85
		1998	14	3,247,863	10	68
		1999	16	3,069,886	8	55
		2000	15	3,134,079	8	40
Bristol Bay	Red king Crab	2001	19	3,158,179	12	26
		2002	19	2,621,851	12	23
		1996	196	8,405,614	16	4
		1997	256	8,756,490	15	4
		1998	274	14,233,063	15	5
		1999	257	11,090,930	12	5
		2000	246	7,546,145	12	4
Bering Sea	Opilio (snow) crab	2001	232	7,786,420	19	3
		2002	242	8,856,828	20	3
		1996	234	65,712,797	102	45
		1997	226	119,543,024	133	65
		1998	229	243,341,381	207	64
		1999	241	184,529,821	158	66
		2000 ^d	229	30,774,838	137	7
		2001	207	23,382,046	97	30
	Bairdi Tanner crab	2002	189	30,252,501	76	24
		2003	192	26,341,958	155	10
		1996	196	1,806,077	5	12
		1997-2002		Fishery Closed		
Pribilof Islands	Red king crab	1996	66	200,304	<1	11
		1997	53	756,818	3	14
		1998	57	510,365	3	13
	Blue king crab	1996	66	937,032	4	11
		1997	51	512,374	3	14
		1998	57	516,996	3	13
	Red/Blue king crab	1999-2002		Fishery Closed		
St. Matthew Island	Blue king crab	1996	122	3,080,916	7	8
		1997	117	4,649,660	12	7
		1998	131	2,868,965	7	11
		1999-2002		Fishery Closed		

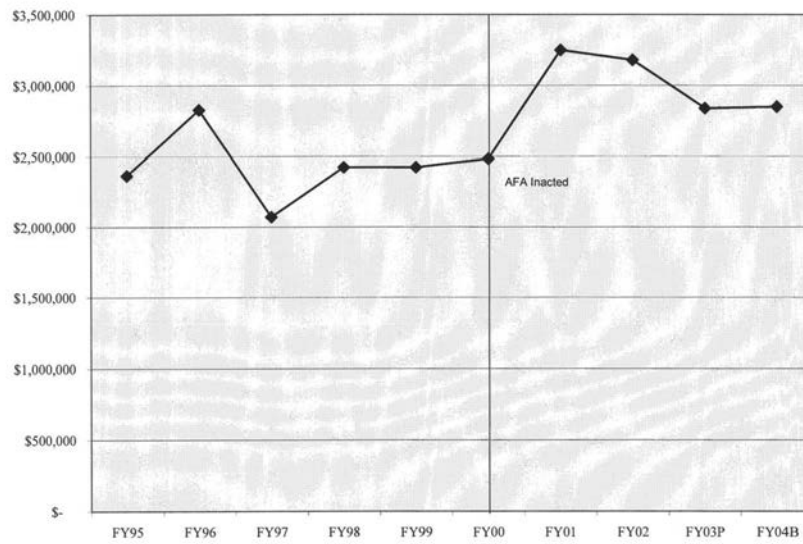
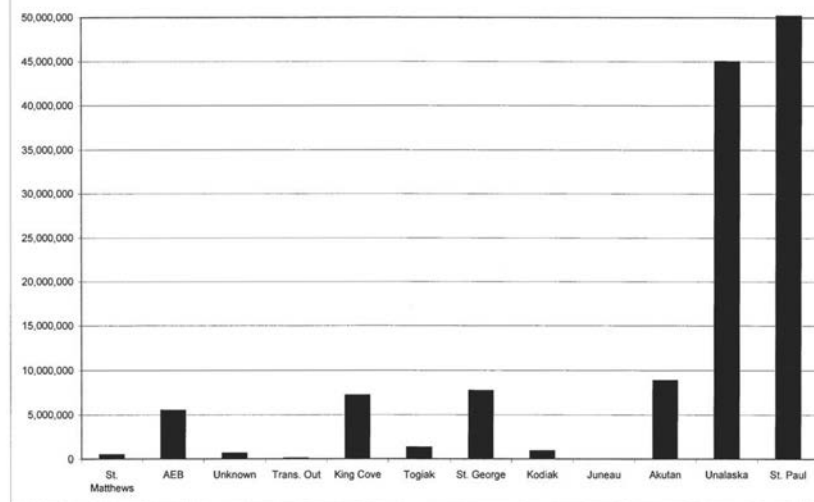
^aDeadloss included.

^bCatch per unit effort, defined as catch of legal crabs per pot.

^cData from the fishery east of 174° W longitude.

^dFishery did not open until April 1 due to sea ice.

Chart H

Fisheries Business Tax**Opilio Harvest Five-Year Average in Pounds 1995-1999**

Port of Kodiak, commercial fishery data 1990-2003

Year	Bristol Bay red king crab		Total Harvest	Kodiak Percent of Harvest	Bering Sea opilio crab		Total Harvest	Kodiak Percent of Harvest
	Vessels	Landed pounds*			Vessels	Landed pounds*		
1990	5	200,000	20,362,342	1.0%	7	561,349	161,821,350	0.3%
1991	10	572,092	17,177,894	3.3%	12	921,472	328,647,269	0.3%
1992	9	326,455	8,043,018	4.1%	10	374,596	315,302,034	0.1%
1993	10	314,765	14,628,639	2.2%	7	484,312	230,787,000	0.2%
1994	Season Closed				2	200,000	149,775,765	0.1%
1995	Season Closed				7	600,458	75,252,677	0.8%
1996	7	385,237	8,405,614	4.6%	6	200,000	65,712,797	0.3%
1997	13	397,086	8,756,490	4.5%	2	100,000	119,543,024	0.1%
1998	4	300,000	14,233,063	2.1%	4	400,000	243,341,381	0.2%
1999	12	545,147	11,090,930	4.9%	2	200,000	184,529,821	0.1%
2000	28	845,280	7,546,145	11.2%	13	1,451,842	30,774,838	4.7%
2001	28	785,930	7,786,420	10.1%	4	400,000	23,382,046	1.7%
2002	25	783,399	8,856,828	8.8%	10	650,000	30,252,501	2.1%
2003					1	<100,000	26,341,958	0.3%
TOTAL		5,455,391	126,887,383	4.3%		6,644,029	1,985,464,461	0.3%

*Numbers in italics are approximate for years in which there were less than three processors.

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION NO. 2003-27

A RESOLUTION OF THE UNALASKA CITY COUNCIL SUPPORTING THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL'S FINAL RECOMMENDATIONS ON THE BERING SEA/ALEUTIAN ISLAND (BSAI) CRAB RATIONALIZATION PROGRAM ADOPTED ON JUNE 10, 2002.

WHEREAS, the North Pacific Fishery Management Council has completed an in-depth and public four-year analysis of the rationalization alternatives that included the harvesters, processors and communities, as requested by Congress; and

WHEREAS, the Unalaska City Council supports the economic, social, safety and conservation benefits as outlined in the North Pacific Fishery Management Council's final recommendations of the crab rationalization plan; and

WHEREAS, the North Pacific Fishery Management Council's final recommendations and trailing amendments are meant to balance the interests of harvesters, processors, communities and captains; and

WHEREAS, the final recommendations are meant to ensure the protection of the economies of coastal communities involved in the BSAI crab fisheries; and

WHEREAS, the City of Unalaska has seen first hand the benefits of the rationalized Pollock fishery through the American Fisheries Act, which has provided economic stability, vessel safety and improved resource management; and

WHEREAS, the North Pacific Fishery Management Council adopted the preferred alternative for the rationalization of the BSAI fisheries by a unanimous vote of 11-0 on June 10, 2002, in Unalaska, Alaska; and

WHEREAS, the North Pacific Fishery Management Council has recently adopted a suite of measures contained in the crab rationalization trailing amendment package that further defines the issues, community protection measures, binding arbitration, captains' quota shares, and data collection; and

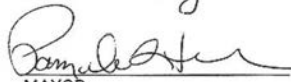
WHEREAS, the implementation of this program would follow its final approval through the Environmental Impact Statement (EIS), which is currently, being prepared and Congressional authorization for this program would also be necessary.

UNALASKA CITY COUNCIL
RESOLUTION NO. 2003-27
PAGE TWO

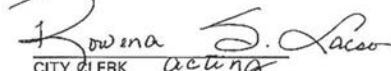
NOW THEREFORE BE IT RESOLVED THAT the Unalaska City Council supports the final recommendations of the North Pacific Fishery Management Council as it pertains to the BSAI crab rationalization plan; and

BE IT FURTHER RESOLVED that the Unalaska City Council supports continuance of the legislative process leading to final resolution and implementation of the BSAI crab rationalization plan.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 5th DAY OF May, 2003.


MAYOR

ATTEST:


CITY CLERK *acting*

St. George Office:

P.O. Box 929
St. George, Alaska 99591-0929
Tel: (907) 859-2263
Fax: (907) 859-2212



Resolution No. 2003-04

Whereas the North Pacific Fishery Management Council has approved a Bering Sea Crab Rationalization Plan;

Whereas the City of St. George has invested over \$40 million in Public and Private Funds for harbor and economic development infrastructure;

Whereas over 90 % of the City of St. George's income is based solely on the Bering Sea Crab Fishery;

Whereas the City of St. George has issued General Obligation Bonds in excess of \$3 million and has one of the highest per capita debt in the State of Alaska;

Whereas; the City of St. George has no processing of Cod, Salmon, Herring and Pollock within the community;

Whereas passage of the Crab Rationalization Plan by Congress will lead to a more safer and efficient fishery;

Now therefore be it resolved the City of St. George endorses the Crab Rationalization plan adopted by the North Pacific Fishery Management Council;

Be it further resolved that the City of St. George requests that Congress adopt the Crab Rationalization Plan passed by the North Pacific Fishery Management Council

Alvin Merculief Passed by a vote of 1 for and against 0 May 13, 2003
Alvin Merculief, Mayor

Attest

Olga J. Stepan
Olga J. Stepan, City Clerk



CITY OF SAINT PAUL

P.O. BOX 801
SAINT PAUL ISLAND, ALASKA
99502-0601
(907) 546-2331
FAX (907) 546-5158

RESOLUTION 01-07

A RESOLUTION OF THE ST. PAUL CITY COUNCIL IN SUPPORT OF CRAB
RATIONALIZATION FOR THE BERING SEA ALEUTIAN ISLAND CRAB FISHERIES

WHEREAS, St. Paul has successfully developed a fisheries based economy based on the St. Paul Harbor which, since 1995, has been the primary crab processing location in the Bering Sea and the number two fishing port in Alaska in terms of fisheries tax revenues; and

WHEREAS, crab deliveries to St. Paul exceeded 40% of the total harvest in years 1997 and 1998; and

WHEREAS, St. Paul crab landings and processing have accounted for approximately 85% of the cash entering the community; and

WHEREAS, a collapse of the Bering Sea crab stocks occurred in 2000 resulting in an 86% reduction in the year 2000 Guideline Harvest Level for Bering Sea snow crab, and a significant loss of revenue to the community; and

WHEREAS, the collapse of the Bering Sea crab stocks has resulted in an industry-wide effort of harvesters, processors, and communities to develop a rationalization program; and

WHEREAS, St. Paul has actively participated in the development of a rationalization program in order to protect its investment in the industry, which continues to face a severe downturn on crab stocks and high levels of overcapitalization in both processing and harvesting; and

WHEREAS, the situation warrants immediate legislative relief to enable an alternative management solution to encourage restoration of the stocks and to enable industry consolidation; and

WHEREAS, the United States Congress authorized, through the December 2000 Omnibus Appropriations Bill, provisions which direct the North Pacific Fisheries Management Council to do an analysis of crab rationalization options; and

WHEREAS, the analysis of any quota based program is specifically to include harvesters, processors and communities; and

Resolution 01-07
Page 2 of 2

WHEREAS, the North Pacific Fishery Management Council has stated that it is still committed to the overall rationalization process for the crab fisheries; and

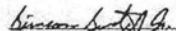
WHEREAS, the North Pacific Fishery Management Council appointed a crab rationalization committee and the City of Saint Paul had a representative appointed to the committee that kept the St. Paul City Council advised on the committee's progress and recommendations to the North Pacific Fishery Management Council; and

WHEREAS, the Council of the City of Saint Paul supports and recognizes the need to protect the investments of current participants, including harvesters, processors and the community of St. Paul, as well as other affected fishing communities, and the need for a rational decapitalization of the industry;

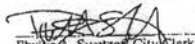
NOW THEREFORE, BE IT RESOLVED THAT the Council of the City of Saint Paul supports the proposal for a fair and equitable quota-based program of a two-pte IFQ allocation to harvesters and processors including the requirement that the live crab deliveries be to processors in the regions within Alaska in accordance with recency requirements and historic delivery rates; and

BE IT FURTHER RESOLVED that the St. Paul City Council urges the North Pacific Fishery Management Council to complete their analysis in a timely manner as they feel this issue is of utmost importance and forward their report on to Congress as soon as possible.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE COUNCIL OF THE CITY SAINT PAUL THIS 23RD DAY OF MAY 2001.


Simeon Swetzkof, Mayor

ATTEST:


Phyllis A. Swetzkof, City Clerk

Kodiak Dependency / Based on the City of Kodiak's Written Testimony to Congress

The BSAI crab industry is both capital-intensive and landings-intensive. By definition there are two types of "crab-dependent communities" – those that are primarily harvesting communities like Kodiak, and those that are heavily dependent on large-scale processing investments, like Unalaska/Dutch Harbor and St. Paul Island. This distinction is even made by the City of Kodiak in Linda Freed's testimony before the US Senate Committee on Commerce, Science and Transportation. The data below is quoted directly from Ms. Freed's testimony to illustrate that Kodiak is a crab-harvester community, not a crab processing community.

In conclusion, Kodiak has been appropriately awarded more than \$100 million in harvesting rights under the NPFMC's program; while processing-dependent communities have likewise been appropriately granted their processing history in the form of community-based processor quota.

Kodiak - Bristol Bay Red King Crab	1997	1998	1999	2000
BBRKC as % of Landings	0.1%	0.1%	0.2%	0.3%
BBRKC as % of Value	1.6%	1.5%	1.6%	1.8%

Kodiak - All Crab, including Non-Rationalized and GOA Species	1997	1998	1999	2000
All Crab as % of Landings	1.1%	1.2%	1.4%	2.7%
All Crab as % of Value	3.1%	2.0%	2.8%	3.4%

Community	Dependence On BSAI Crab*	Derby Share of Crab Landings**	IPQ Share***	IFQ Share****	Comments
Unalaska/ Dutch Harbor	14%	34.03% - Opilio	32.65%-Opilio	4%	Crab Processing Town With Some Crab Harvesting
Kodiak	3.15%	0.14%-Opilio 3.50%-BBRKC	0.20%-Opilio 3.80%-BBRKC	15%	Crab Harvesting Town With Almost No Crab Processing
St. Paul Island	69%	40.02% - Opilio	39.0%-Opilio	0%	Crab Processing Town With No Crab Harvesting

* Extrapolated from Table 2.2-22, Table 2.2-23 (Unalaska), Table 2.6-10 (Kodiak), and Table 2.5-6 (St Paul), NPFMC "Crab Rationalization Program Alternatives", Appendix 2.6. St Paul data is understated due to confidentiality restrictions in the analysis.

** 1995-1999 Opilio and BBRKC, NPFMC and State of Alaska Data. Some rounding due to confidentiality issues.

*** Table 3.6-4, NPFMC "Trailing Amendments" analysis and other sources.

**** Extrapolated from Table 1.0-1, NPFMC "Crab Rationalization Program Alternatives", Appendix 2.6, Page 2

Senator STEVENS. Our last witness is Arni Thomson, Executive Director of the Alaska Crab Coalition, Seattle, Washington.

**STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR,
ALASKA CRAB COALITION**

Mr. THOMSON. Good afternoon, Mr. Chairman and Distinguished Members. On behalf of the Alaska Crab Coalition, I would like to thank you for the opportunity to provide testimony on this vitally important subject of crab rationalization. I am Arni Thomson, Executive Director of the Alaska Crab Coalition.

Mr. Chairman, the ACC speaks on this subject from long experience and deep conviction. Established in 1986, the ACC is the longest-standing organization of Bering Sea crab fishing vessel owners. I think it fair to say that among the several organizations of Bering Sea crab harvesters, the ACC has been the most consistent contributor to the efforts of Congress, the Commerce Department, and the North Pacific Fishery Management Council to provide for the improvement of our fisheries.

The ACC applauded your inclusion in the Consolidated Appropriations Act of 2001 a directive that the North Pacific Council consider rationalization of the Bering Sea crab fisheries, including individual fishing quotas, processing quotas, and community quotas, and to report back to Congress on the outcome. This directive placed the Bering Sea crab fisheries on the Council's priority list and guided the ensuing analysis and debate in a direction ensured that all interested parties a place at the table. Most importantly, this directive implicitly recognized that all three major groups—harvesters, processors, and communities—would have to be accommodated in order to ensure the viability of any rationalization plan.

Mr. Chairman, the Council's plan represents a fair balance of the effected interests, a compromise that promises to achieve, for the first time, the fundamental goal of ending the race for crab that has killed our fishermen, accelerated bycatch and discards to damaging levels, and devastated the economics of the fisheries for harvesters, processors, and communities alike.

I would like to just stop briefly to point out that at the beginning of our rationalization efforts, that the industry took a real hard look at the AFA model in order to try to emulate the AFA model in the crab fisheries. However, there certain distinct characteristics between the fisheries, the fisheries being unique, it just would not work. Basically, the pollock fishery is a single-species fishery. There are long-established one-on-one market relationships and contracts between fishermen and specific processors. However, in the crab fisheries, we have multi-species fisheries when the fishermen oftentimes have multiple markets, and the fisherman very expressly stated that they did not want a closed class of processors.

So this gravitated toward a request from the fishermen to the processors to produce a proposal of matching processor quota shares for the fishermen's IFQs, and that is how we got started down the road of the processor shares. And then we added to that the regionalization concept which was proposed by the City of St. Paul in the Pribilof Islands.

Going on, the following are six key elements of the plan. Quotas for fishermen, processors, and communities that will end the race

for crab, reduce bycatch and waste, and promote sustainability of the resources and economic stability for the industry and communities, improve safety by ending the derby fishery, preservation of the regional distribution of economic activity through regional share designations of harvester and processor quotas that will distribute landings and processing between specific regions, plus additional protections.

Mr. Fraser mentioned to arbitration programs that were presented to the Council, one by the harvesters and the other by the processors. This is not entirely correct. The proposal that was developed, primarily by the crab group, of whom he represents, was a flawed proposal that did not commit the fishermen to a binding arbitration program. So, in good faith, the Alaska Crab Coalition could not support that program, because we had initially proposed an arbitration program, and a binding one. It was the only way that the arbitration would work.

Having said that, a mandatory binding-arbitration program to settle price disputes between harvesters and processors and to ensure competitive market prices with a firm Council commitment to change the program if it does not work. This commitment is contained in the May 6th letter of the North Pacific Council to the Congress.

Going on, initial harvest-share allocations to captains of 3 percent of the tack and the opportunity for skippers and crew to purchase shares with a low-interest loan program, an important precedent.

Comprehensive data collection and program review to assess the success of the rationalization program and to provide oversight of revenue share ration between harvesters and processors.

Processor quotas are, as we all know, the main point of the controversy. Some individuals and organizations would have the Council or Congress throw out processor quotas and leave it at that. But, Mr. Chairman, that would be repudiating the very directive that Congress enacted into law and that Council respected.

As we all know, Congress did not establish any priority among the effected groups or among the various management measures to be considered. Why not throw out harvester community quotas and leave it at that? The question is rhetorical, and the answer is obvious. Because harvesters, communities, and processors all have the vital interests at stake and the right not only to be considered, but also to be accommodated in any rationalization plan.

In closing, Mr. Chairman, I ask that you take account of the considered judgment of the ACC and other organizations that believe that the plan developed by the Council family is the only viable approach to restoring our Bering Sea crab fisheries in a fair, balanced, and effective way. I respectfully urge that you and your colleagues in Congress grant the authority that remains necessary to bring this critically needed plan to fruition.

Finally, at the suggestion of the North Pacific Council, in its letter of May 6, 2003, we request that the Congress explicitly authorize and direct the Council to take immediate action to change the arbitration program if it does not work.

That concludes my comments, Mr. Chairman. Thank you very much.

[The prepared statement of Mr. Thomson follows:]

PREPARED STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR,
ALASKA CRAB COALITION

Senator Stevens, Senator Murray, Distinguished Committee Members:

The Alaska Crab Coalition ("ACC"), a trade association representing the owners of Bering Sea crab fishing vessels, as well as service and supply companies in the fishing industry, is grateful to have been invited to testify at this important hearing on the Bering Sea and Aleutian Islands ("BSAI") crab rationalization plan ("Plan") adopted by the North Pacific Fishery Management Council ("Council") at its June 2002 meeting. The ACC strongly supports the Plan.

Since its inception in 1986, the ACC has worked closely with the Council, the Department of Commerce, and Congress in the development and implementation on an array of statutes, regulations, and policies aimed at the improvement of safety, conservation, efficiency, and fairness in the BSAI crab fisheries. The challenges have been enormous: the highest occupational fatality rate in the Nation, resources in severe difficulty, the industry on its financial knees, and communities at serious economic risk. What sets the Plan apart from all previous management responses, and what promises to deliver the long-sought after solutions, is its comprehensive approach to addressing the root cause of the problems plaguing these fisheries—the race for crab. Through implementation of the Plan, excess harvesting and processing capacity will be removed from the BSAI crab fisheries in a way that will be fair to harvesters and processors, alike, and will avoid economic dislocation of dependent communities. Through a carefully balanced system of harvester and processor quota shares and regional delivery provisions, a sustainable equilibrium of production capacity and resource availability will be achieved, markets will be stabilized, safety will be improved, and communities will be protected.

Clouds of paper from one disgruntled special interest group or another must not be allowed to obscure the fact that the Plan represents the best collective judgment of the Council family, based on the wise guidance of Congress. Blaring opposition must not be permitted to drown out the chorus of support for this excellent Plan.

Background and Need for BSAI Crab Rationalization

The BSAI crab fisheries have long presented daunting challenges to fisheries managers, our industry, and dependent communities. Safety concerns have necessarily attended fishing operations in the extremely harsh natural environment of the Bering Sea and Aleutian Islands area. Conservation became an issue, as soon as major fishing fleets began to exploit the resource. Allocation issues arose for our fishermen, when we first sought to "Americanize" the fisheries, by wresting control from the foreign fleets, and later, after such issues arose again, when that goal was achieved and our domestic harvesting exceeded the available resources.

As communities became dependent upon BSAI harvesting and processing, the scope and complexity of economic and social issues greatly increased. The full spectrum of these challenges became less and less manageable, as BSAI crab resources suffered declines and failures under enormous fishing pressures.

Following much debate and the rejection of a harvester-only individual quota program, a license limitation program ("LLP") was adopted in 1995 and implemented in 1998, with the objective of slowing, if not halting, increased harvesting capacity in the fisheries. Of course, this was only a halfway measure, as it failed to prevent "capital stuffing," that is, additional investments increasing the efficiency of the limited number of vessels that were permitted to operate in the fisheries. Limits on the number of pots per vessel and various other management measures, including time and area closures, also failed to solve the fundamental problem of excessive harvesting capacity. The race for fish intensified.

In the superheated race for crab, these measures had perverse safety, conservation, and economic effects. Crab pots are designed to "soak" for long enough to allow all the bait to be consumed, and for the juveniles to leave, through escape panels, in search of other forage. Fishing seasons comprised of a few days, coupled with pot limits, led to a spiral of increased risk to the safety of fishermen and to the sustainability of the resources, as frantic efforts were made to maximize the numbers of pot lifts in short seasons. In these circumstances, juvenile crab feeding on bait, would still be in the pots at the time they were lifted, and a high percentage of juveniles would perish, as a result of the changes in temperature, when they ascended and descended the water column. The future of the crab fisheries was dying with its juveniles. Many independent vessel owners were left hanging precariously on the

brink of bankruptcy. Worst of all, the BSAI crab fishery remained the most dangerous occupation in the United States.

In 1996, while the LLP was wending its way through the bureaucracy toward implementation, the Sustainable Fisheries Act was enacted. It included two measures first proposed by the ACC, new national standards to limit and reduce bycatch, and to improve safety, and a third measure supported by the organization, authority for the Federal Government to conduct industry-funded fishing capacity buybacks. However, to the disappointment of the ACC, the Act also included a four-year moratorium on new individual fishing quotas.

Bering Sea pollock took center stage in the North Pacific, and in October 1998, the American Fisheries Act established a unique system of harvester/processor coops for that fishery, including a 90/10 formula for mandatory deliveries to exclusive processors. Most of the Council's time during the ensuing 18 months was consumed with resolving those issues left to its jurisdiction by the new law.

During the year 2000, the crab industry considered various forms of coops and a buyback. However, these potential management responses to the crisis in the BSAI crab fisheries achieved a critical mass of support.

At the close of the year 2000, the moratorium on individual fishing quotas was extended for an additional two years. However, in the Consolidated Appropriations Act of 2001 (P.L. 106-554), Congress also enacted special legislation that served as a guidepost for future BSAI crab management:

. . . The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, and quotas held by communities. The analysis should include an economic analysis of the impact of all the options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representative in a timely manner.

In January of the following year, the Council formally constituted a 21-member Crab Rationalization Committee that represented all affected interests, including the crab industry organizations, dependent communities, and the environmental community. The work of that committee culminated on March 23 of that same year with endorsement, by a two-thirds vote, of a system that would provide quotas for both fishermen and processors and regionalized landing requirements. This served as the basis for the Council's eventual adoption of a "three-pie voluntary cooperative program."

On June 10, 2002, the Council adopted the Plan by a unanimous vote of 11-to-0. The very fact that the long public debate leading up to this decision was spirited and even rancorous at times demonstrates that the Council proceedings were a model of public participation, with input received from every party who had a perspective to bring to the table. There were countless hours of deliberation in the Council and its committees, as well as within and among interested and affected individuals and organizations over a period of more than two-and-a-half years. Anyone who failed to offer his or her views cannot claim a lack of opportunity to have participated in the process.

There was, it is true, a last-minute disagreement over a system of arbitration designed to resolve price disputes. No organization was more concerned than was the ACC, which withdrew support for the Plan, pending the outcome of efforts to resolve the crisis. Fortunately, the ACC was able to support the end-product, based on the expectation that the Council and Congress would critically and continually review the operation of the arbitration process, and that the Council would make changes, if that proved necessary to assure fairness. This expectation was proved correct, when the Council submitted its May 6, 2003, report to the Congress, with the following statement concerning arbitration:

If the preferred arbitration program does not function as intended, the Council is committed to using a different arbitration structure to provide a fair price setting environment. Because of the completed analyses of these different structures, an alternative structure, such as the "Steele Amendment," could be expeditiously adopted as part of the binding arbitration program should Council review of the program suggest that the arbitration program is not working as intended. If Congress approves this program, such explicit authority could be provided to the Council to ensure timely action to address problems that might arise . . . We hope that Congressional authorization of the program will provide explicit direc-

tion to the Council concerning its obligation to review and amend the program should any unanticipated negative impacts arise.

The Plan

While there have been concerns that the Plan somehow establishes unsuitable precedents for other fisheries, the fact is that it responds in a tailored way to a unique combination of circumstances:

- Horrendous weather and ice problems on the fishing grounds, resulting in the highest occupational fatality rate in the Nation.
- Extreme over-capitalization in both the harvesting and the processing sectors.
- Heavy economic and social reliance of five communities, located in two regions, on crab production.
- Unstable and declining crab resources, and excessive bycatch waste.
- Foregone fishing opportunities, due to inability to manage small resources.

The Plan responds, in a sustainable, fair, and balanced manner, to the complex resource, environmental, economic, social, and safety challenges confronting stakeholders in the major BSAI crab fisheries:

- Vessel owners;
- Skippers and crews;
- Processors;
- Communities;
- The public at large.

To achieve this goal, the Plan contains the following primary elements:

- Harvest shares allocated to fishermen for 100 percent of the total allowable catch (TAC), with 90 percent of those shares to be delivered to processors holding processing shares, and the remaining 10 percent to be deliverable to any processor.
- Processing shares allocated to processors for 90 percent of the TAC.
- Regional share designations for processor allocations and the corresponding 90 percent of the harvest allocations, distributing landings and processing between specific regions, plus additional community protections.
- A mandatory binding arbitration program to settle price disputes between harvesters and processors and to insure competitive market prices.
- Voluntary harvester cooperatives permitted to achieve efficiencies through the coordination of harvest activities and deliveries to processors.
- Community Development Quota allocations of 10 percent of the TAC.
- Initial harvest share allocations to captains of 3 percent of the TAC, and the opportunity for skippers and crew to purchase shares.
- Low-interest Federal loan program for captains and crew to purchase harvest shares.
- Comprehensive data collection and program review to assess the success of the rationalization program and to provide oversight on revenue share ratio between harvesters and processors.

The Plan presents an impressive array of improvements over the prevailing situation. These included:

Biological Benefits

- Improved stock management through use of a TAC.
- Reduced overharvests through individual allocations.
- Reduced discards resulting longer soak times and better sorting of undersized crab through escape mechanisms in gear.
- Improved handling of discards by ending the race for crab.

Economic Benefits

- Compensated reductions in capitalization through voluntary share transactions.
- Economic stability for the harvesting and processing sectors and communities.

Social Benefits

- Preservation of regional distribution of economic activity.

- Facilitated entry to the fishery for crew.
 - Protection of historical interests of captains.
- Safety Benefit
- Improved safety by ending the derby fishery.

Conclusion

The ACC commends Senator Stevens for his foresight in authoring the statutory guidance that was essential to the Councils' work in developing the Plan. We likewise commend Senator Murray for her contributions to strengthening the statutory framework for management of our crab fisheries. We are deeply grateful for the impetus provided by Congress for us to overcome the crisis in our fisheries, and we respectfully request that the requisite, additional statutory authority be provided as soon as possible for implementation of the crab rationalization plan crafted by the Council family.

Thank you.

ADDENDUM TO THE STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR, ALASKA CRAB COALITION

I. The unique differences between the Bering Sea Pollock fishery and the crab fishery, and the alternatives for rationalization that led to development of the three-pie program with harvester, community, and processor shares:

- Rationalization solutions for processors, as well as fishermen, begin with restricting entry. The pollock model found in the American Fisheries Act of 1998 (AFA) was specifically designed for the pollock industry, where stocks were abundant, and long term single market contracts were in effect, particularly within the onshore sector, when the measure was enacted. The number of participants in both the harvesting and processing sectors was stabilized, and the startup costs for new entrants into the processing sector had become almost prohibitive. Processing was, in 1998, and remains today, at full capacity, so markets were not available to accommodate new harvester entrants. During negotiations on the AFA, processors insisted upon, and harvesters accepted, closed classes for both sectors. In addition, the processors requested, and the harvesters accepted, a statutory requirement to contractually bind particular vessels to particular processors, with very little practical flexibility for harvesters to change processors. The AFA was a grand experiment in fisheries management that everyone now agrees has worked very well for the participants operating in the unique circumstances of the pollock fishery.
- In the initial crab industry discussions during the winter and spring of 2000, a proposal was considered, utilizing key elements of the shorebased AFA approach. This was a sincere attempt to arrive at a prompt solution in critical circumstances. However, there were several reasons the AFA model did not work for Bering Sea crab. Most importantly, crab fishermen preferred to avoid a closed class of processors and restriction of markets, and believed that the unique circumstances of their fishery justified and required a different approach.
- In the crab industry, there are multiple fisheries and fishermen have multiple markets. With the exception of the Aleutians Islands brown crab fishery, the crab stocks are low. There is also gross overcapacity of fishing vessels and floating processors. Using the AFA model for Bering Sea crab would have eliminated small processors, as eligibility criterion called for fishermen to match up with the processor they had delivered the majority of their catch to in the previous year. Most fishermen delivered the majority of their product to the large companies, with the small companies being minor markets for partial loads. The small companies, some of which are price leaders, would have lost out on processing privileges under the AFA model.
- A buyback of crab processors was also discussed, but this also meant closing the class of processors and limiting entry in the future. As noted above, fishermen were opposed to a closed class of processors.
- Following failed attempts to adapt the AFA coops, crab fishermen, themselves, asked processors for a processor shares proposal. This was the point of departure for negotiations that led to processors shares, and eventually, regional delivery requirements to protect communities, as envisaged by provisions of the Consolidated Appropriations Act of 2001.

- The crab program, as structured with processor shares, contrary to what opponents have to say, is less restrictive than the AFA. There is no closed class of processors; new processors can enter the industry at any time. Unlike the situation for pollock harvesters under the AFA, crab fishermen under the crab rationalization plan can move from coop to coop, without a penalty year spent fishing in an open access fishery, and fishermen can belong to more than one coop at a time.
- During the public process of considering alternatives, the industry also had discussions of a single-pie IFQ program, combined with regionalization of deliveries of crab—without processor shares or any AFA-style contractual relationship with processors. The technology needed for the processing of crab is much simpler and less costly than that required for pollock, which facilitates the transition of fishermen into the processing sector. This proposal continues to be very popular amongst fishermen.

Due to the low status of the stocks, there is a significant amount of excess capacity in floating processors that can be purchased at rock bottom prices. Under this single-pie proposal, harvesters could form large fishermen's cooperatives and either purchase a floating processor, or contract with one or more processors or catcher processors, to custom process their product. Under custom processing agreements, fishermen retain ownership of the product, and they can then market it themselves, enabling them to extract more rents from the fishery. In this scenario, harvesters would have the power to vertically integrate the industry, bypass the existing processing sector and disrupt the economics of the five communities that are dependent on established processing facilities. The reality of the outcome of this alternative proposal's effects on efforts to maintain the historic revenue sharing ratio between the harvesting and processing sectors, and to maintain stability in coastal communities, contributed heavily to the development and adoption of the crab rationalization plan's three-pie quota share program.

- The uniqueness of the crab fisheries cannot be overemphasized. They have the only processor shares and have the only regional delivery community protection requirement, as well as the only harvester-processor arbitration process to insure pricing fairness.

II. Transcript of the testimony of the CRAB Group, Linda Kozak, Gordon Blue, Terry Cosgrove, Richard Powell and Jeffrey Stephan to the North Pacific Fishery Management Council on October 8, 2000 in Sitka, Alaska. At this time the CRAB Group requested (1) that the NPFMC begin a full BSAI crab rationalization analysis; (2) formally establish a BSAI crab rationalization committee; (3) direct the committee to assist the Council staff to identify the elements and options of an analysis for BSAI crab rationalization.

In response to a question from a Council member during this testimony Ms Kozak stated on behalf of the CRAB Group that it was their belief that the Council is the only forum for developing an analysis for a program for crab IFQs, or crab co-ops.

See the attached notarized transcript in electronic format, pdf file, from October 8, 2000.

ATTACHMENT

1 NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL
2 BSAI CRAB CO-OP AND BUY-BACK DEVELOPMENT
3 October 8, 2000
4 Sitka, Alaska
5 Mr. Benton, Chairman, North Pacific Fisheries Management
6 Council
7 Ms. Behnken
8 Mr. Austin
9 Dr. Fluharty
10 Mr. O'Leary
11 Mr. Bundy
12 Mr. Duffy
13 Dr. Balsiger
14 Mr. Samuelson
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P R O C E E D I N G S

CHAIR BENTON: We have four individuals that wish to comment on item D-2, crab management. First up is Linda Kozak and company. After Ms. Kozak is Gordon Blue.

MS. KOZAK: Good morning. Thank you, Mr. Chairman. For the record, my name is Linda Kozak, and with me today is Dick Powell, Terry Cosgrove and Gordon Blue as well as Jeff Stephan and Lynn Walton should be here as well.

We're asking Helen to hand out an item that we originally itemized as under agenda D-3, and we're asking now that we address it under D-2(b), and then when you get to your staff tasking, that hopefully this item will be recalled. And I will very briefly read the statement, and then a few comments.

Number 1. To begin a full BSAI crab rationalization analysis by initially tasking the Council's staff to develop a discussion paper that outlines the elements and options to be considered in the full analysis, and to present this discussion paper to the Council at the February 2001 meeting.

Number 2. Formally establish a BSAI crab rationalization committee.

And, number 3, direct the committee to assist the Council staff to identify the elements and options of an analysis for BSAI crab rationalization.

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1 Mr. Chairman, the paper that is attached to this
2 statement are the vessels who have contracted with me to
3 present the crab rationalization issues to you today.

4 Just a brief history. In October of last year industry
5 came to the Council and asked the North Pacific Council to
6 begin work on rationalizing the crab fishery. At that time we
7 were talking about co-ops. And Kevin O'Leary and Dave Fluharty
8 volunteered to serve as facilitators to industry meetings that
9 would be held to begin flushing out options that might be
10 needed to be reviewed by the Council in an analysis. And we
11 met nearly monthly until this spring when a formal ad hoc
12 committee was decided that it was needed, because there were
13 just too many people coming to the meetings. It was very well
14 attended, very high interest in the crab fleet. And the
15 consensus among the crab fleet at that time, and still is,
16 something needs to be done.

17 When the ad hoc committee was approved by members of
18 industry, there were several additions to make sure that
19 everyone's views were represented, and with alternates to the
20 individuals, there were over 20 people that served on this
21 committee. And the committee initially began to address
22 elements that might be needed to be reviewed in analysis.

23 The last couple of meetings the committee moved into
24 attempting to reach a consensus agreement on a legislative
25 package, or an agreement between members of industry to

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1 finalize something very quickly for the crab industry. That
2 was not a co-op, that was more of an IFQ that was being
3 addressed, as the staff report indicated to you.

4 Many of us were not comfortable with agreeing to
5 different allocations or issues that were being addressed in
6 this arena without an analysis. We wanted to see what the
7 potential impacts might be. That's why we're here today. We
8 believe it's time for the Council to begin formally putting
9 this into the cycle, and begin something with relation to crab
10 rationalization. We don't know if co-ops would be best, we
11 don't know if IFQs would be best, we don't know what kind of
12 system would work best for this fleet, but we do know that we
13 need something in order to provide some relief.

14 In that regard, those of us who are here have also been
15 very actively working with the buy-back effort as well, and
16 we'd be happy to answer any questions in regard to the status
17 of that, if you would like to ask those.

18 But today what we are going to ask you to do is to
19 formally establish a committee, and we're going to ask you to
20 please put on your staff tasking something that we believe is
21 doable between now and February, and that is for elements and
22 options to be considered for analysis and to be included in a
23 discussion paper to the Council at the February meeting. We'd
24 like to ask for a full-blown analysis to begin at this meeting,
25 but we do recognize time constraints and other constraints on

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1 the staff with expense and people moving around, so we're going
2 to ask that at least you get started, and if anyone else has
3 any comments here? All right. We'd be happy to answer any
4 questions, Mr. Chair.

5 CHAIR BENTON: Okay. Thank you very much. Any
6 questions? Mr. O'Leary?

7 MR. O'LEARY: Linda, then is it my sense that
8 it -- the folks that are at the table now feel that the Council
9 is the better forum to -- or is the appropriate forum to
10 develop an analysis and for a program for IFQs, or crab co-ops,
11 if that would.....

12 MS. KOZAK: Well, Mr. Chairman, Mr. O'Leary,
13 it's our belief that it's the only forum.

14 MR. O'LEARY: Okay.

15 CHAIR BENTON: Mr. Bundy?

16 MR. BUNDY: Thank you, Mr. Chairman. Linda,
17 you're asking the Council to appoint a committee now. I mean,
18 very -- now. Do you have any comments, does the group have any
19 comments as to what that committee ought to look like in terms
20 of who's represented?

21 MS. KOZAK: Well, Mr. Chairman, Mr. Bundy, I
22 think that it's important to recognize that the ad hoc
23 committee has really fleshed out a lot of things, and that --
24 but it's just very bulky, and I think maybe the committee
25 should be streamlined a bit. And the committee has not ever

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1 been formally tasked with anything, and so we would very much
 2 like the committee to be answerable, if you will, accountable
 3 to the Council with regard to specific tasking, and I think
 4 that it would be very easy to streamline the committee and
 5 still allow for full representation.

6 CHAIR BENTON: Mr. Penney?

7 MR. PENNEY: Mr. Chairman, I'm prepared to make
 8 such a motion as contained in point 2. I move that we formally
 9 establish a BSAI.....

10 CHAIR BENTON: Mr. Penney, that's out of order.
 11 We've got to go through public comment and go through.....

12 MR. PENNEY: Beforehand?

13 CHAIR BENTON:all this before we.....

14 MR. PENNEY: Okay.

15 CHAIR BENTON:do any motions.

16 MR. PENNEY: Can you come back to me maybe?

17 CHAIR BENTON: I don't know.

18 MR. PENNEY: Okay.

19 CHAIR BENTON: Mr. Samuelson?

20 MR. SAMUELSON: Thank you, Mr. Chairman. I
 21 guess to any of you sitting at the table, for this Council to

22 develop a -- start down the road of rationalizing the crab
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1 industry shows up at the Council and says rationalize the
 2 fishery. And as a Council member, I'm getting some real mixed
 3 signals sitting up here from the crab industry. And the other
 4 third is out trying to get a buy-back program that supposedly
 5 was approved. So as a Council member, you know, as an industry
 6 that their stocks are depressed and has major conservation
 7 problems, and over capitalization, the crab industry is
 8 definitely shipping those Council member a confusing signal.
 9 They're all screaming for help, and you're all going in
 10 different directions asking for help, so I hope that you folks
 11 sitting at the table could play a role in consolidating the
 12 crab industry's thoughts and representation. I guess it's more
 13 of a statement, but I'm asking you guys as the industry to give
 14 this Council member a hand.

15 MS. KOZAK: Mr. Chairman, Mr. Samuelson, that's
 16 a very pertinent point, and that's why we're here today,
 17 because without an analysis, we believe that it will be very
 18 difficult to reach a consensus on anything. And that's why we
 19 need to go through the Council process and have the analytical
 20 options addressed so that we know what we're going to be seeing
 21 in some regard. So I agree.

22 The one thing that I think is very positive is that the
 23 industry unanimously agrees that something needs to be done.
 24 And I think that's exactly why the Council is the best forum to
 25 do that.

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1 MR. SAMUELSON: Thank you.

2 MR. URLERING: Mr. Chairman?

3 CHAIR BENTON: Mr. Urlering (ph).

4 MR. URLERING: Yeah, I would just observe that

5 it's certainly within the purview of this Council to

6 rationalize the crab fishery. I think it's an impossible task

7 to rationalize crab fishermen.

8 MS. KOZAK: We're very rational, Mr. Urlering.

9 UNIDENTIFIED VOICE: Very good.

10 CHAIR BENTON: Any further questions? Okay.

11 Thank you, very much. Gordon Blue, you might as well just stay

12 there. I'm assuming you're testifying on something different?

13 MS. KOZAK: He's got to get his notes.

14 CHAIR BENTON: After Mr. Blue is Dorothy

15 Childers.

16 MR. BLUE: Thank you, Mr. Chairman. My name's

17 Gordon Blue. I'd like to speak briefly about I think it's D-

18 2(a).

19 Obviously the rationalization of fisheries has most of

20 the attention of most of the crab industry. We need the help

21 and support of the Council, however, in continuing to rebuild

22 the fisheries. We have often experienced in this Council

23 family system the feeling that the crab fisheries are a sort of

24 a stepchild, and that feeling has come home to me today as I

25 listened to the plan team report. Obviously with a lot of the

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1 management of the crab fisheries being done by the Board of
 2 Fish, it is easy to take the view that they're doing the job,
 3 and that's well enough, and we should leave well enough alone.
 4 That's what I got from the plan team report, that nothing needs
 5 to be done at this point.

6 I don't think that's true. I think that the plan team
 7 perhaps needs some help in focusing and that you can provide
 8 that help. I would read from the plan team report, in the
 9 minutes on page three, the top of page three, the plan team
 10 lists their comments. Comment one deals with the PFC limits.
 11 The final sentence of that says, however, the team urges
 12 continued monitoring of trawl by-catch, and would have concerns
 13 necessitating a revisiting of the PFC limit if the by-catch
 14 levels increase.

15 Item three, the final sentence, the team will continue
 16 to closely monitor by-catch and would raise concerns should by-
 17 catch increase at low population sizes.

18 And item four deals with modeling, which I'll deal with
 19 in a moment.

20 I have a copyrighted fishery information sheet, a
 21 newsletter, that shows that as of 8/19 the trawl by-catch in
 22 the so-called seal (ph) BLZ, which is that area in which
 23 repeatedly by-catch has been capped, for 2000 was 1,053,000
 24 animals. In 1999 that number was 438,000 animals. That is a
 25 substantial increase. I have also seen a more recent edition

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1 of this newsletter which places the number more to date at 1.2
 2 million animals within that zone. I would maintain that that
 3 is a substantial increase, and I would like you to ask the plan
 4 team to look at that, and to at least examine what the factors
 5 are that have lead to that drastic three-fold increase in by-
 6 catch within that zone.

7 Finally, I would ask you to look at the 1996 industry
 8 agreement which you had before you in June again as a reminder,
 9 on -- that placed these caps and set the zone for the by-catch
 10 limitation. And it says, caveats and recommendations number 1.
 11 If area 517 by-catch exceeds 500,000 snow crab in any one year,
 12 the Council should consider moving the southern boundary of the
 13 snow crab by-catch limitation zone from 5630 to 5600. I would
 14 like you to please request that at least that much data
 15 analysis be done to identify what the 517 by-catch is year by
 16 year since 1996, so that we can look at it with respect to this
 17 proviso, so that the Council might reconsider should that
 18 number have ever reached that threshold. Thank you.

19 CHAIR BENTON: Thank you very much. Any
 20 questions? Okay. Thank you, Gordon. Dorothy Childers? After
 21 Ms. Childers is Steve Minor and crowd.

22 (This portion not requested)

23 NOTE: TERRY COSGROVE AND JEFFREY STEPHAN DID NOT SPEAK ON THIS
 24 TAPE. THE OTHER SPEAKERS WERE DOROTHY CHILDERS AND A PORTION
 25 OF STEVE MINOR'S TESTIMONY.

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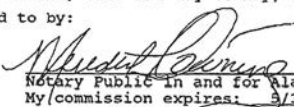
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Senator STEVENS. Well, thank you very much.

I think the issues are before the Congress very succinctly here now. It would be my intention to call upon each of my colleagues in the order in which they came to ask questions. And I hope we are in agreement we will limit ourselves to 10 minutes on the first round.

I will recognize you, Senator Murray, for any questions you might wish to ask.

Senator MURRAY. Well, thank you very much, Mr. Chairman, and I know time is short, so I will limit myself to just a couple of questions, and let me start with Mr. Thomson.

Can you explain to the Committee the differences between the pollock fishery and the crab fisheries which led the Council's crab committee to reject a plan that simply duplicates the AFA?

Mr. THOMSON. Senator Murray, that is a rather complex, but very important, question. It will take me a minute, but I will give it my best shot.

The American Fisheries Act, as I mentioned earlier, we did take a very hard look at duplicating that model, since there was a firm legislative precedent. However, the pollock fishery, as I mentioned in my testimony, is a single-species fishery. There are very close alignments between individual fishermen and single processors, not multiple processors, very close, established relationships, a number of which there were even contracts in place. The fishermen and the processors agreed to a closed class for both the fishermen and the processors. That was point number one.

Second, they agreed, in the legislation, and this particularly applies to the onshore sector, to statutorily bind themselves, the fishermen, to a single processor for 90 percent of his deliveries. So that was the basis for, particularly, the onshore American Fisheries Act, the model that the crab industry took a real hard look at.

However, on the crabbers' side, in looking at the AFA model we quickly came to—start to pull away from it, because the fishermen, a number of them, were very much opposed to closing a class of processors and to that sort of market restriction.

We also, at that time, looked at the effects on the small processors. In other words, most of the fishermen—or a number of the fishermen had multiple markets, but their major markets were the large crab-processing companies, and if you look at the criterion which determines who your market will be, it would be the one that you sold the majority of your product to. The end result would have been the small processing companies, of which a number of them are price leaders, being disenfranchised in the program. They would virtually have not been participants in the program. So we had to shift away from the AFA model.

One of the other things we looked at that was proposed, and discarded, was harvester IFQs with regionalization only. What would have been the outcome of that? The outcome would likely have been the pretty quick disappearance of several small companies, because larger companies would have bought them up or possibly bid the price up on crab to the point where smaller companies would go away.

The other very clear outcome of the IFQ program with regionalization-only would have been we would have seen the harvesters

form into some major fishermen's coops and then contract with a floating processor or two floating processors or some crab-catcher processes and essentially—although it would have been a great deal for the fishermen that I represent, the fact of the matter is we would have been able to totally bypass the processing sector of the industry, and there would have been devastating effects particularly on the Pribilof Islands. So that was another option we looked at.

Then we looked at an option of buyback of the processing sector, but any rationalization solution of processors or fishermen requires restricting entry. And so to do a buyback, you, first of all, would have to close the class of processors and do a limited entry.

So I know I am kind of going on a bit here, but there were some very important differences that made the AFA unworkable.

Senator MURRAY. OK, thank you.

Mr. Fraser, if Commerce decides against authorizing the process of quotas, what specifically would you recommend that the Council and that the Congress do?

Mr. FRASER. Mr. Chairman, I think—and Senator Murray—that the Council has done a yeoman's task in developing this whole program and 90 percent of the work they have done is pertinent to moving forward, with a traditional IFQ program absent a PQ element being contained within the program. So I think that is the starting point.

As I mentioned in my testimony, I think there are some processor protections that are inherent even in the non-processor-quota portion of the program. The Crab Group does not object to strengthening those. And I think that the AFA does provide a model for moving in that direction.

Clearly, you know, no two fisheries are exactly the same. One of the key differences between the two is that the amount of capital on the processing side, in comparison to the harvest side, in the pollock fisheries is much greater. The pollock fishery is much more capital intensive in processing than crab is, and thus the justification or more processor protection was greater in the pollock fishery. And harvesters have not moved, as Arni pointed out, near as much in the pollock fishery as they do—because you do not have—and you do not have turnover processors. You have got a small number of processors that were essentially closed class even before the AFA was passed. And so it was easier, I think, for harvesters in that fishery to accept a reduced amount of competition that was inherent in structuring the AFA, as long as there was some competition left in that market arena.

In the crab fishery, we have seen 80 processors who processed crab during the last 10 years during the period of time the Council analyzed. Only 21 of the 80 would receive any processing quota at this point, and most of the processing quota is concentrated in the hands of just a half a dozen of those, and most of those are the AFA processors.

I think you have to recognize that the AFA has, in and of itself, provided a large measure of protection for AFA crab processors and that the protection for the remaining processors is where it needs to be focused as the Council moves forward with the non-processor quota plan.

The sideboards that you, Senator Murray, and Chairman Stevens, included in the AFA, the sideboards on crab processing, gave the non-AFA processors more opportunity than they will receive under this plan. This plan actually awards the AFA processors more crab than the sideboard limit. I think that if you move forward with a non-processor quota plan, you ought to retain the sideboards that you have already included within the AFA to protect those remaining non-AFA processors.

Senator MURRAY. Well, just a rough guess, how long would it take for the Council to finalize another plan if we were not to move forward legislatively?

Mr. FRASER. Mr. Chairman and Senator Murray, the Council has an EIS that is prepared. At the request of the advisory panel, a repeated request to the advisory panel, we asked that they include in that EIS other alternatives than processing quotas. There was quite a bit of resistance to that, but, in the end, NOAA's general counsel advised the Council that they must look at viable alternatives, including legal alternatives, and the IFQ system is currently a legal alternative. So the Council has a completed EIS for an IFQ system, as well as an EIS for the processor quota system.

So I think they could move forward with a legal IFQ program faster than by waiting for Congress to work through all the issues relating to authorizing processor quotas. And I think, as you have heard from Mayor Kelty and others—or it used to be Mayor Kelty—

[Laughter.]

Mr. FRASER. But everyone in this room, I think, agrees for the need to move forward.

Senator MURRAY. Right.

Well, Mr. Chairman, thank you. I know you have to move on, and I will submit the rest of my questions for the record, if that is OK.

Senator STEVENS. Thank you very much.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

There is obviously a lot of disagreement at the table, but I think it would probably be fair to say that the reason we are here, we are looking for, within the industry, to provide safety within the industry, we are looking to sustain the resource, and we are looking to provide the protection, the economic stability, for the communities themselves, the coastal communities. And we have heard from both Ms. Freed and Mr. Fraser that your concerns are that the communities are not protected.

What suggestions do you have? How can we address that component?

Ms. FREED. I believe you have heard from Mr. Fraser that the plan the Council has before it, without PQs, provides quite a bit of protection. There is a regionalization component to the plan, which provides protection for communities. And we think that component does a very good job protecting communities.

What is important to Kodiak is to provide the ability for our plants to compete. Kodiak has processed Bering Sea crab for over 30 years. The two years selected for the PQ portion of this program selects 2 years in which people really could not logistically bring

their crab back to Kodiak, even if they wanted to, because of fish and game regulations.

We want the opportunity to compete, to have crab come back to Kodiak. And to do that, there needs to be a competitive market for the harvesters. We believe that the plan, absent of PQs, allows that to happen.

Senator MURKOWSKI. Thank you.

Mr. Duffy, has there been an economic analysis or an economic impact study done that has assessed or reviewed the impact to the coastal communities on the regional Governments, or, for that matter, the State tax revenues? And if there has not been one done, will there be one conducted as part of the EIS?

Mr. DUFFY. Through the Chair, Senator Murkowski, there was extensive economic analysis conducted, community profiles developed, all kinds of information was generated through the Council crab rationalization process. I am not sure of the specific comment the representative from Kodiak made about the state not analyzing something, but through the Council process and leading to a Council conclusion in June, there were extensive community profiles developed with all sorts of economic analysis of the impacts of the different alternatives.

So the analysis has been done through the Council process, Mr. Chairman.

Senator MURKOWSKI. Go ahead, Mr. Chairman. Thank you.

Senator STEVENS. Senator Cantwell, do you have any questions?

Senator CANTWELL. Yes, thank you, Mr. Chairman.

Nobody has mentioned the 100-million-loan buyout program, and I know that it is in the rulemaking process. What effect do you think that that will have on this plan? Should we wait until we see that rulemaking? Do we think it is actually going to reduce the capital investment that has been made? What are the thoughts of the various panelists?

Mr. THOMSON. A good question, too, Senator Cantwell.

The crab industry eagerly awaits the final implementing regulations for the buyback program. And we are conservatively estimating that we could reduce the over-capitalization somewhere around 20 to 25 percent, or reduce capitalization 20 to 25 percent, going into this rationalization program. And the low-cost loan would actually result in a redistribution of that quota share in a proportional manner to all of the harvesters that stay in the fishery. And so a lot of folks are really looking forward to it.

Senator CANTWELL. Do you think it is essential to making this program work?

Mr. THOMSON. I would not say it is essential, no. We think it would definitely be a very positive benefit, though, stepping into the program.

Mr. FRASER. Mr. Chairman, following up on that, the Crab Group, as is implicit in our name, Crab Rationalization Buyback Group, has long supported the buyback program and is very grateful for the efforts of the Chairman and Senators getting that program through, and there has been a lot of hard work to make sure that it moves through a NMFS process and ends up being implemented. But we are, as I understand it, on the verge of implementation, and once that happens there is a very expeditious process

that is laid out in regulation that could result in real benefits in next season, in fact, if all falls into place on the time line, to the fleet.

So I think the buyback program is good. It should move forward. The time line for implementation of rationalization program is unknown at this point, whether or not Congress authorizes processor quotas. So I think there are immediate benefits there, and we should move forward with it.

Senator CANTWELL. And, again, no effect on this decision? No—

Mr. FRASER. I think they are standalone issues.

Senator CANTWELL. OK.

Anybody else?

Mr. Fraser, you mentioned in your testimony that you thought there was better protections for communities that might be implemented, or better binding arbitration. What, specifically, were you thinking of?

Mr. FRASER. Mr. Chairman and Senator Cantwell, on the community-protection side, I think, as Ms. Freed alluded, the community protections that were part of the trailing amendments were intended to protect communities from the impacts of processor quotas. If you do not go down that path, those sorts of community protections are not needed. And, as she said—I will leave her statement stand on the community-protection side.

On binding arbitration, I have submitted a much more lengthy comment in my written testimony, because it is largely a technical kind of issue and there are a lot of nuances. But Arni was correct, there were two basic models that came out of the Committee. Most of the harvest groups supported a fleetwide model, and that model would create a pre-season process where one arbitrator would look at information from all processors and all harvesters and establish a fair, minimum price which would become the outside option for harvesters to then negotiate their contracts with processors. And if they can bring more to the table by delivering at specific times that enhance the size of the pie, they may share those additional benefits differently than that minimum price.

The last best offer arbitration process that the Council adopted creates a segmented series of arbitrations, where the arbitrators do not necessarily communicate with one another. They happen in isolation. The arbitrator does not have the ability to cross check the information from a processor whose arbitration he is conducting with information about an arbitration with a processor that is being arbitrated by somebody else. And as a result, you do not have good information. And I think that it is very critical that the information base for any arbitration program be as good as possible.

And right now, under the Magnuson-Stevens Act, NMFS is prohibited from collecting economic data from processors. The first thing you would need to do is make sure you change the Act to mandate the collection of the relevant economic data and make that data available to the arbitrator, because the Act further restricts the ability of NMFS to provide economic data that it does collect to any outside party. So it is essential that the arbitrator have access to the full amount of information.

But the key difference that—the model that Arni's group supported and ended up being supported by the Crab Group and others as an attempt to compromise was called the Steele amendment. Mr. Steele is here. But it attempts to simulate the situation we have now, where you have a fleetwide price-formation process that establishes a price, and everybody has to meet that minimum. A processor cannot come in and say, "I have got excessive costs, and you have to pay those costs for me." In the status quo, that does not happen. Once somebody establishes the price, all the other processors step up and meet it. And we support that concept as being essential to an arbitration process.

Senator CANTWELL. So, Mr. Fraser, you are saying you are not out-and-out against processor quotas if what you call a "fleet model" of an arbitration process would be in place?

Mr. FRASER. Mr. Chairman, Senator Cantwell, I think if we go down the path of processing quotas, it is essential that we have a good binding-arbitration process to help ameliorate the fact that you are segmenting the market—

Senator CANTWELL. I have that point, but would you support a plan that had that model?

Mr. FRASER. I believe the concept of processor quotas is fundamentally anti-competitive and bad public policy. What I said in the advisory panel early on in the process is, if somebody comes forward with such a model that really takes the place of competition, and members of the Crab Group, members of Tom Casey's group, (the Fisheries Conservation Group), the Kodiak Association, (United Fishermen's Marketing Association), the Alaska Fishery Market Association—the group that does crab marketing and bargaining—if they support it, I would put aside my personal objections to a processor quota and remove myself from this process. But those groups are not endorsing the package that the Council has put forward for binding arbitration. Some members of those groups believe that a different ratio of A and B shares (perhaps 50:50 or 70:30), combined with a fleetwide binding arbitration model that provided a minimum price as an outside option, would simulate a competitive price. The position of the Crab Group is that processor quota is bad public policy and that it will not be possible to open Pandora's Box in just one fishery and then prevent its spread to other fisheries.

Senator CANTWELL. Well, if I could, Mr. Chairman, Mr. Thomson, what is wrong with a fair minimum price set by an arbitrator as a beginning point?

Mr. THOMSON. Senator Cantwell, you say what is wrong with the—

Senator CANTWELL. What is wrong with the concept that Mr. Fraser said in having one arbitrator have analysis—basically having an information database that has all the information and setting what is a fair minimum price so that there can be a starting point as a way to protect them. We often run into this as we are trying to sell our agricultural products abroad for countries who do not want to open up to our product. They just want to know what the minimum price is going to be so that they know that they are not going to get taken. Then everybody else comes in to negotiate the price.

Mr. THOMSON. We do support that. We fully support it. And that concept is implicit in the Steel amendment. And the Council, in its recent letter to your distinguished Members, states that if there is a problem with the process, the arbitration process that they have approved as of April of this year, that they will immediately address that, take a look at that process, and implement this minimum fleet-wide arbitration process. They will replace the existing one with the minimum, fleet-wide.

Senator CANTWELL. So that is a back-up and——

Mr. THOMSON. It is a back-up——

Senator CANTWELL. I do not want to—I know that I am—I do not want to—I want to give time to the Chairman, yield my time back, but I—Mr. Fraser, you are shaking your head that that is acceptable process, or no?

Mr. FRASER. It is not an acceptable process. I think Arni and I agree that the Steele amendment is better than what the Council adopted but it needs to be in place on day one.

Senator CANTWELL. OK. Thank you.

Thank you, Mr. Chairman.

Senator STEVENS. Well, thank you very much.

I think we ought to put our eyes back on the goal that we sought to achieve with the original Magnuson Act, and that was to protect the species, to assure the reproductive capability of the North Pacific was to be the primary source of fisheries for the United States, that we wanted to assure the survivability of the species. We really did not envision protecting fishermen—you will not like that—or protecting communities. We were protecting the fish.

Now, I still think we have got some ways to go to assure ourselves that we are still on that line. I think it can be achieved under the recommendations of the Council, but I am worried a little bit about some of our powers. It is my understanding the Commission will still establish seasons, right? They will establish annual quotas, right? And this formula will apply to their annual actions.

One of the things we have to be sure, that we do not get ourselves in the position that some Federal court somewhere is going to start regulating the fisheries off the Alaska coast. I think that that would be—a delay of a year or two in litigation over this plan would be destructive to everybody, including the fishery, I think, because of the problems.

Do you all agree that—not agree, but would you care to comment upon a follow-up to Senator Cantwell's question? Do you envision that we have the authority now to condition the approval of this change in the law upon compliance with the recent letter that was received by us concerning the arbitration procedure? Do you understand?

Mr. FRASER. Mr. Chairman, I will rush in, I guess.

Senator STEVENS. There is a letter on file, as Mr. Thomson said, saying that the Council would consider this change. And, in effect, it is a tacit admission that perhaps the procedure for arbitration is not sufficient to carry out their original intention, and they indicated they would revisit it.

Mr. DUFFY, do you believe we——

Mr. DUFFY. Thank you, Mr. Chairman.

Senator STEVENS.—should consider making our action here conditioned upon the follow-up to that letter?

Mr. DUFFY. Mr. Chairman, the discussion was about binding arbitration. It was, indeed, very complex. Counsel, as well as the industry, spent 6 months trying to sort this one out. It was very difficult. In the end, it a 6–5 vote was made by the Council, that is the binding-arbitration process. It is a pre-season non-binding price formula. You go through the season, and if you cannot reach agreement between the harvester and processor, there are provisions for binding arbitration.

This concept of the Steele amendment is incorporated into the Council motion in that what the proponents were trying to do in the Steele amendment can be looked at by the nonbinding arbitration process prior to the start of the next season to get a feel for how that works.

If the question is, “Can Congress change what the Council has recommended on binding arbitration,” the answer is yes.

Senator STEVENS. We never have. We have never done that before, because we created the Council with the idea that regional management was better than management from Washington. But, strangely, I hear some of you saying you would rather have some management from Washington now.

[Laughter.]

Mr. DUFFY. Mr. Chairman, if I could respond to that. I do not want that to be attributed to me because I am a big supporter of the Council process and I think we have done a very good job shaping a very difficult program.

What I was suggesting is the binding-arbitration discussions and the vote were very, very close, and there were a lot of very difficult concepts for the Council to wrestle with. And we would not be the first to admit—or the last to admit, that we were, you know, experts in binding arbitration. It is a subject where a lot of attorneys make a living. So it was a complex issue.

Mr. FRASER. Mr. Chairman, to follow up on that, the Council—actually NOAA General Counsel has sent a letter to Department of Justice, the Antitrust Division, requesting some bounds, I think, on what constraints they will bump up against in setting up different binding-arbitration programs. I concur with Mr. Duffy, the M-S Act process under which you delegate authority to the Council for managing fish. However, we would be stepping into new territory here if you start delegating authorities to councils to manage markets. And it is unclear at this point how broad of authority you would have to grant to the Council to give them the ability to change horses from one system of binding arbitration to another if, in fact, the system that they have identified at this point does not work out.

And so any Council action to deal with a flawed arbitration program will not be final. Prior to review they will wait a year until they see the results. Fishermen will be described as coming to the Council whining for a change, so they might want to see 2 years of results. And then there is an analysis process, and it takes a year for the Council to work through its process and then 6 months for NMFS to implement things, assuming the fix is within the scope of authority Congress might grant. So we are looking a num-

ber of years down the road. If the effects are seriously negative, they may be irreversible. That is the concern.

So from our perspective, as harvesters, we would like to see a binding-arbitration program in which we have confidence clearly built in ahead of time before you go down any further on the path of authorizing the processor quotas.

Senator STEVENS. Well, the difficulty I have is I think that the Council has responded to an act of Congress that has already been passed. And you are requesting, Mr. Fraser, that we amend our own action in seeking to have the Council make this determination.

I am interested in your comment concerning the antitrust provisions. That has been one of the worries that has been raised here in this Committee. And I am fearful, again, that should this be taken to court on the antitrust concept, we are liable to find a court managing the fisheries off our coasts. I want to make sure that does not happen. And if the antitrust provisions, if there is a decision that this is in violation of antitrust, I want to make sure it is returned to the Council to manage this fishery and not kept in some Federal court.

But, beyond that, I am reminded of the time I spent with former Secretary of Commerce Mack Baldrige, when he was still with us, and he was very interested in the king crab, and he taught me about the way king crab travel across the ocean floor. He had a report that one of you issued concerning the pods, that they are 40 and 50 feet high, and how they travel so far.

It leads me to this question. What assurance is there that when a harvester comes to a processor, that the processor will be open under this proposal? We have a processor share, and you must sell to a processor that has part of that share. But if you are the harvester, and you come in when the processor that you are obligated to deliver to is closed, where do you go? Where do you go, Mr. Thomson?

Mr. THOMSON. The way the program is designed is there is—90 percent of the processing shares are allocated to certain processing companies. But you have to match up with one of the companies. If a company is closed or its quota share is filled up with other harvesters, he has to go someplace else. But there will be—there is somebody there to match up with.

Senator STEVENS. But it has to be someone within the 90 percent, right?

Mr. THOMSON. It has to be someone within the 90 percent. But we envision that this thing will operate similar to the AFA, that there are so many advantages to the fishermen joining coops that months ahead of time you are going to pair up into a coop, say, with another 10, 20, 30 boats. Fishermen will have to make decisions who is going to fish, who is going to tie up their boats, so that they can save money in order to make money.

I do not know whether I am answering your question correctly, but we do not envision this becoming a problem.

Senator STEVENS. Do you believe that the processor holding part of the 90 percent shares has an obligation to remain open to receive the harvesters' product when it is brought to the shore?

Mr. THOMSON. Yes, I believe he has an obligation. I mean, he is there to be in business and to make money. In order to do that, he has to contract and receive product.

Senator STEVENS. Let me tell you, I am sure you remember that I had an unfortunate invasion into this process when we commissioned the Lady Anne back in 1980, and that was one investment that I had—the only investment that I can recall that I had to buy my way out of.

[Laughter.]

Senator STEVENS. This is not a business without great financial risk, and I am worried about what happens to processors under this proposal when there is such an enormous share allocated to certain processors with no chance of entry into that circle at all in the future.

Now, I want to make sure I understand this, now. Annually, the allowable catch is determined. If it is increased next year by 20 percent, the same processors get 90 percent. Is that right?

Mr. THOMSON. That is correct, sir.

Senator STEVENS. Mr. Duffy, is there any chance for a new processor to enter into this without another act of Congress?

Mr. DUFFY. Yes, Mr. Chairman, there is 10 percent B shares. That is one option. So any harvester can process their B shares. In addition to that, any processor without processor shares can purchase processing quota from those that currently hold it if they strike an agreement.

Senator STEVENS. I saw that, but does that apply when there is an increase in the quota?

Mr. KELTY. Mr. Chairman?

Senator STEVENS. Yes?

Mr. KELTY. There are caps in place. If the quota goes up, then there are caps on the amount that the processors can process, and that would mean more poundage into the open-access B-share category.

Senator STEVENS. The 10 percent is not 10 percent in that—do you agree, Mr. Duffy?

Mr. DUFFY. Mr. Chairman, the way it works with these caps is—let us say, for example, opilio crab stock goes up dramatically. At some point, the 90:10 is diminished to 80:20, depending on the total amount of the stock there. With those caps in place, the amount of B share that anyone can process is increased when you hit those caps.

Senator STEVENS. And does the Commission make that determination?

Mr. DUFFY. Yes, that is part of the comprehensive Council plan. And on an annual basis, the Department of Fish and Game will be the total allowable catch, by species.

Ms. FREED. Mr. Chairman, if I could respond to that, as well. We have looked very carefully at those caps set on the community protection committee, and we are very disappointed at how high those caps are set. We believe that they offer no respite from the 90:10, not, certainly, in our lifetimes.

We would also like to mention that the 10 percent B share, open share, we do not believe that provides any leverage for the fishermen at all, and provides no leverage for communities. Ten percent,

frankly—even in open access right now, fishermen are told if they do not bring their crab to a particular plant, they do not have a tender contract. Or if they do not bring their crab to a plant, they are not going to have other opportunities with a particular processor.

We have had public hearings where fishermen have testified before the city council saying, “We do not believe that there is any chance that that 10 percent will ever be able to be brought back to Kodiak, because the processors that we deliver our 90 percent to will hold us hostage.”

Senator STEVENS. We can take care of that, Ms. Freed. I do believe most of the boats you are talking about are home-ported in Kodiak, and they certainly could bring back their last catch without any problem. I do not think—that is another antitrust problem. If you think that, for 1 minute, that a processor can demand that they get part of the 10 percent in exchange for an agreement to buy part of the 90 percent, you have got yourself an antitrust case right there. Now, that is not going to happen twice, I will tell you, because that is an antitrust violation.

Ms. FREED. Well, Mr. Chairman, also the fact is, is that there is so little quota that comes to Kodiak because of the years that were selected that boats will not be able to bring their last load home as they have traditionally done. That is one of the things that we took to the North Pacific Council and asked them to consider, and they dismissed that out of hand.

Boats will not be able to bring their last load home to Kodiak, even boats that are home-ported in Kodiak, because under the current plan, Kodiak gets roughly 3 percent of the quota. Traditionally, what comes home in a last load when there is open opportunity for the fishermen to bring their crab back, is 10 percent or more.

Senator STEVENS. Well, what about that 10 percent? Why could not you get part of the 10 percent?

Ms. FREED. The way the last-load home works is, most of them would have more onboard, potentially under these low tax right now, that is more than just the 10 percent. But what I am saying is, that is not equivalent to what the processing quota is and their ability to bring that product home now, because they have to deliver 90 percent of their product to plants that are not in Kodiak.

Mr. KELTY. Mr. Chairman?

Senator STEVENS. Yes, Mr. Kelty.

Mr. KELTY. Yes, I have to take exception to some of Ms. Freed’s comments. You know, the Kodiak history through 1997 through 1999, it is a little bit under 4 percent on red crab. It is not even 1 percent on opilio. Part of my testimony that I turned in, I went back trying to find some history for Kodiak, and I went back all the way to 1990. 1990 to 2003 for opilio, 1.9 billion pounds were processed. Kodiak got 6.6, only 6.6 million out of 1.9 billion pounds of opilio went back to Kodiak. Years that—we had 300-million-pound quotas in the early 1990s. Less than a million pounds went back to Kodiak. On red king crab, in that same timeframe, from 1990 to 2002, there was 126 million pounds of red king crab processed; 5.5 million pounds went back to Kodiak, about 3.8 percent, during that whole 10-year period.

It just shows you there is a lack of dependency on the Bering Sea resource going back to that community. This last opilio season, in 2003, there was 197 boats fished. Only one vessel—it was a one-trip season, 26 million pounds of opilio caught—only one vessel decided to go back to Kodiak, with less than 100,000 pounds. On the king-crab season the year before, I think seven vessels went back. And these are one-trip seasons.

Senator STEVENS. We have got to move on here.

Senator Murray, do you have any further questions?

Senator MURRAY. No, thank you, Mr. Chairman.

Senator STEVENS. Senator Murkowski, do you have any further questions?

Senator MURKOWSKI. I want to ask, really quickly, on this 10 percent, the undesignated shares. You know, I understand the purpose and the intent and the leverage to the fishermen and hopefully to encourage new processors to come into the industry so we do not have the antitrust concerns. But in terms of how we got to the 10 percent—again, I guess, Mr. Duffy, this would be directed to you—what kind of an analysis went into that to determine it is a 90:10? How did we arrive here? Just very briefly, because I am sure there is more history than I want to know.

Mr. DUFFY. Very briefly, through the Chair, Senator Murkowski, the concept of a 90:10 split was within a range of discussions that happened in the industry committee. That industry committee met for over a two year period. So that was really where you had a range of—I think it was 70 to 90 percent was discussed, if you went down the processor-quota idea.

So in terms of the 90 percent and specifically where was it analyzed, I think the concept, generally, of processor-quota shares, their benefits to communities, the potential relationship impacts it might have between harvesters and processors, was all in the Council analysis. But I do not think you can take your finger and point to a specific point or place in the analysis where it says 90 percent or 85 or 95 or 100.

The Council had to listen to the industry committee, the advisory panel, the science committee, and had to come to a decision about what they thought an appropriate share of the rents would be through a program that protects communities, harvesters, and processors. That is where the 90 percent processor quota, 10 percent B share came from.

Mr. FRASER. Neither the Advisory Panel or Scientific and Statistical Committee recommended 90:10. Nor did the crab industry committee appointed by the Council make a specific recommendation on the A:B ratio. However, ACC which supported the Committee report to the Council came to the June 2002 meeting recommending 80:20. The Council did not debate any alternative ratios, and so the record fails to identify why 90:10 is the preferred option. If I could just add, Mr. Chairman, that the one place that the analysis did deal with it was the two economists who were contracted by the Council, Professors Milan and Hamilton, and that analysis was qualitative. And the relevant quote was that, “as the ratio increases of processor quota to independent market quota, it is going to favor processors over harvesters.” And I think that is just—it is

almost intuitively obvious. But we are at a ratio that is clearly at the high end of favoring processors.

Senator MURKOWSKI. And if I recall your testimony previously, you had said that that summation had been taken out of the——

Mr. FRASER. It had been removed from the main document and——

Senator MURKOWSKI. OK.

Mr. FRASER.—put back in as an Appendix.

Senator MURKOWSKI. Thanks.

Thank you, Mr. Chairman.

Senator STEVENS. Mr. Duffy, I have some other questions to ask, if I may. We are obligated to get out of this room by 4:30.

Is there a commitment by the Council to monitor the crab plan and make any needed adjustments if one of the three pies or partners—harvesters, processors, or communities—are disadvantaged by some unintended consequence?

Mr. DUFFY. Mr. Chairman, I think I would be appropriate for that.

The Council, in their problem statement, talked about—and goal statement—talked about trying to achieve equity between the harvesters and processors. In developing this program, we put a number of measures in place we hope will do that. The program-review portion of it is review by the Council 3 years after implementation and then comprehensive review of the program 5 years after implementation and a commitment by the Council to modify the program, if needed or as appropriate, to ensure equity between the harvesters and processors. The Council is on record as taking that approach.

Thank you, Mr. Chairman.

Senator STEVENS. Mr. Thomson, there has been, implicit in some of the answers, a fear that the processors are going to use the leverage of their 90 percent contracts to control the 10 percent. I have in mind some sort of an amendment that would say that anyone that did that would forfeit forever their interest in the 90 percent. Would you object to that?

Mr. THOMSON. No, Mr. Chairman.

Just a quick comment, if I might, Mr. Chairman——

Senator STEVENS. Yes, sir.

Mr. THOMSON.—to a question that you asked previously about the Council, this Council-approved program and whether or not it should be changed or altered or if we should just authorize the Council-approved program. The ACC has long supported the North Pacific Council process. We live with the decisions of the North Pacific Council, and so we support the program that the Council has approved. We agreed to that going into this process, and I thought other folks that were involved in this process similarly asked for the Council process to develop this program, and I thought that they had similarly agreed that what came out of this process at the North Pacific Council on crab rationalization was going to become the program that we would live with.

Senator STEVENS. I agree with that. It does seem, however, that when we pass this bill, if we do, we have established a new paradigm for the king crab as far as the Council's authority for the future. And as I understand it, they would not have the authority to

modify substantially the whatever it would be, the plan we approved, without the approval of the Congress. We could change that, of course, and say that it could be modified with the approval of the Secretary. I think you all should look at that to see, because I do believe, in a dynamic situation like we have got now, that the possibility of unforeseen circumstances is great.

We have just had a report over the weekend, as you know, from a global study, of the status of fisheries in the world. I was interested to see that there were not any specifics mentioned about the North Pacific. I think the North Pacific Council has the best track record of all the councils in our country, and I think that the United States has the only track record of putting forth a management plan that protects the fish.

Now, we have got to emphasize that even more for the future, and I think that if we are to avoid the unforeseen consequence of having a court intervene in this management process because of violation of some concept that is developed by one of these studies, and that is not—when we look at endangered habitats and the whole concept now, that is not an unforeseen possibility, we have a definite possibility of intervention by litigation in the management of the North Pacific if we do not really tow the line as far as protection of the species. So I would urge you to keep that in mind.

My last question, really, is the problem of Kodiak. And it is been very well expressed here, but I want to ask you all. Do you see any chance for Kodiak to restore any portion of its previous fishery under the plan that is before us now? What is the answer to Kodiak's objection?

Mr. Duffy?

Mr. DUFFY. Mr. Chairman, if I could, we, as a Council, tried to reflect, in the amount of processing quota, historical dependence on that fishery. As you know, under National Standards and under advice from the National Marine Fishery Service, recency is an issue we often look at. The years selected for processing quota for Kodiak, 1997 through 1999, for opilio and Bristol Bay red king crab are within the range of the 1991 to 2000 season and what Kodiak has processed on crab.

Additional measures Kodiak can use is, they can use sweep-up provisions to get crab in the Gulf of Alaska that is just bits and pieces in smaller communities' processing quota. They can purchase IPQ to expand their processing base in the community of Kodiak. And they have some first right of refusal processor quota if certain processors choose to leave that community. So they do have some options available to them upon approval of this program and implementation already.

Senator STEVENS. Is there any future with regard to that harvester-processor portion of the industry as far as Kodiak is concerned?

Mr. DUFFY. Mr. Chairman, if you are talking about the catcher-processor—

Senator STEVENS. Catcher-processor, yes.

Mr. DUFFY. Yes, the catcher-processor sector. What the Council has done with the catcher-processor sector is given each catcher-processor CP shares that reflect what they harvest and what they

processed on board. We have also, in addition to that, given them harvester quota for quota that was previously delivered to the shore. So they are made whole under this program. Now——

Senator STEVENS. But can any of that allocation to processors, the catcher-processor, be brought ashore in Kodiak?

Mr. DUFFY. Yes, the catcher-processor shares can be transferred to shore-based processing through the Council——

Senator STEVENS. Must they be allocated to those that hold the 90 percent?

Mr. DUFFY. The CPs, if they change to shore-based, they would be subject to the 90:10 rule——

Senator STEVENS. Why?

Mr. DUFFY. Well, because they would be moved to shore-based processors who are a part of the processor-quota program.

Senator STEVENS. I do not understand that. I should have asked that question sooner. That was in the back of my mind when I came here. Why should the catcher-processor quota, if they decide to go ashore, automatically go to the 90 percent?

Mr. DUFFY. Remembering Council discussions on that issue—and I will let others chime in—but remembering Council discussions, our intent was to make the catcher-processor fleet whole, but to not let them grow at the expense of coastal communities. So what we set up was a one-way transfer of CP shares to the shore-based——

Senator STEVENS. Could a community purchase the shares of a catcher-processor?

Mr. DUFFY. Can a community purchase catcher-processor shares? Yes, I believe.

Mr. KELTY. Yes, because they can—communities can also purchase the harvester shares.

Mr. DUFFY. Right.

Mr. KELTY. So the CP is a harvester, so they could purchase shares that way.

Senator STEVENS. Ms. Freed, why is not there an avenue for Kodiak to increase its shore-side processing by purchasing some of the shares of the catcher-processors?

Ms. FREED. Our contention is that other communities are getting their historical share under this program; Kodiak is being forced to purchase it. The Kodiak community can ill afford to purchase quota that has been historically coming to Kodiak.

I have got some economic information attached to my testimony, but in 2000, 10.93 percent of the Bering Sea red king crab came to Kodiak. In 2001, it was 10.5 percent. I cannot tell you what it was in 2002 and 2003, because Fish and Game does not have the statistics, but I can tell you I looked out of my office window and saw 14 boats that were home-ported in Kodiak sitting in Kodiak waiting to unload. That is well more than 3.8 percent that is available.

The sweep-up provision for the coastal communities in the Gulf of Alaska that would provide us with an opportunity to add to our quota is, again, a purchase program. It would force the community of Kodiak to spend money that we might need for law enforcement, for our ambulance service, to buy quota to make us whole, and that is an unacceptable situation for Kodiak. It is not happening for

many other communities. It is happening to some other communities in the Gulf of Alaska.

Senator STEVENS. Well, I do thank you all. It is a very perplexing question for us. We are going to have to confer further on it. There is no question about that.

We will accept additions to your comments. Those persons that want to add to this record would do so through these five witnesses. I was limited to the five witnesses by the agreement we had to hold this hearing.

And, again, I thank you all for coming. You know, we get to the point sometime that we forget about the objectives of what we fought for back in the 200-mile limit bill and the whole concept of being able to protect our fishery against, primarily against, foreign intrusion. And I do think that we have to get back to that and keep foremost in our mind that we, as particularly the Northwestern part of the United States and Alaska, are the stewards of that offshore potential and the great species that exist. And the history of the AFA is that we have improved the condition of pollock. The history of this agreement can only be tested in terms of whether it increases the stability of the production of crab in the North Pacific. I hope we keep that in mind.

Thank you very much.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF COLEMAN A. ANDERSON

Senator John McCain, Chairman

Mr. Chairman, members of this committee: I do not support Processor quota in any form. It seems that all common sense has been thrown out the window on this issue of PQS. As an operator of a crab catcher vessel and minority owner in a crab catcher processor I would be left with only four companies to sell to, or compete against for the rest of my life in the industry. I would like the committee to consider the following points:

- The ACC does not represent independent fisherman and is now the smallest group of vessel owners in the industry.
- The NPFMC council's recommendations do not allow for vertical integration by the remaining processors in the industry nor the fact that CIP vessels would no longer be allowed to purchase crab at the end of the seasons. This will skewer the 90:10 split to 95:05 in reality and that would not be a free market in any sense of the term.
- This entire process is about harvester reduction, the processing sector has downsized it's crab operations years ago with the reduced GH/L's that we all live with. All of the crab processing equipment in Alaska is fully depreciated or the former owners are out of business. There is no reason to guarantee the four remaining companies a free ride for the rest of their corporate existence.
- Why has Binding Arbitration become such a hot issue? Because no amount of talk, meetings, and proposed full time positions for legal advisors can create the compelling need to arbitrate by the processing sector if the are guaranteed the crab in the end by law.
- The councils proposals will result in the harvesting and labor sectors of this industry being absorbed by the four remaining processing corporations with no place left to go in an industry that most of us have dedicated our lives to.

As a life long Alaskan and 30 year participant in it's fisheries I have watch all of Alaska's recourses sold and bartered as if Alaska were a third world nation: Please don't allow this to continue here.

Thank You,

COLEMAN A. ANDERSON

PREPARED STATEMENT OF MICHAEL F. BURNS, PRESIDENT AND CO-OWNER, BLUE NORTH FISHERIES

Thank you for the opportunity to tell you a little about our company, Blue North Fisheries, and the likely adverse effects on Blue North of the Bering Sea/Aleutian Islands Crab Rationalization plan recommended by the North Pacific Fishery Management Council (NPFMC). Generally we are supportive of this plan, but have concerns about the design of the processing quota element of the Council's recommendations. First let me explain the background of our participation, the problem with the Council's recommendation for processing quotas as we see it, and a proposed solution to correct the problem.

Blue North Fisheries participated in the Bering Sea crab fisheries for over fifteen years as crab harvesters. As a result of the enactment of the American Fisheries Act (AFA) in October 1998, a limited group of large, so-called "AFA processors" was given a "closed class" for the right to process pollock, and to be fair to processors not allowed to process pollock, the AFA "sideboards" limited the amount of crab that these AFA processors could process. In reliance on the AFA sideboards, and concerned about a restricted processing marketplace, Blue North Fisheries invested more than \$2.5 million in acquiring a processing vessel to process crab caught by

its commonly owned catcher vessels. Starting in October 1999 and continuing to the present, Blue North processed more than one million pounds of raw, delivered crab, all of which was caught by Blue North catcher vessels in the Bristol Bay Red king crab fishery and the Bering Sea *C. opilio* (snow crab) fishery. To our knowledge, Blue North is the only processing entity with significant recent participation that entered the processing sector subsequent to the AFA.

Additionally, Blue North also engaged in joint venture processing operations with Western Alaskan communities since 2001, providing processing markets in coastal communities traditionally deprived of the opportunity to participate in the crab fisheries adjacent to their villages. These operations culminated in the company's recent investment partnership with the CDQ organization Coastal Villages Region Fund (CVRF), now fifty-percent investment partners in Blue North's four crab vessels including the processor *Blue Dutch*.

In June 2002, the NPFMC decided to recommend the establishment of processing quota shares, for the first time ever. Given the extent of our crab processing in 1999–2002 (continuing in 2003), we reasonably expected to receive processing quota shares equivalent to our present effort. However, the NPFMC omitted the most recent three years and picked 1997–1999 (years that are most advantageous for the AFA processors) for the Bristol Bay Red king crab and Bering Sea *C. opilio* (snow crab) fisheries. By contrast, the AFA used for historical participation the three years preceding the year of enactment, which we believe is the correct approach. The result of the NPFMC's selection of less-than-current history is that Blue North is extremely disadvantaged by receiving no processing quota for *opilio* and only a negligible amount for king crab, despite active current processing—processors with less recent participation will receive more processing quota shares. Additionally, the Western Alaska communities of CVRF that have been deprived of opportunities in fisheries off their doorstep will be similarly disadvantaged by this lack of processing opportunity.

"Present participation in the fishery" is the very first criterion listed in the Magnuson-Stevens Act (section 303) for development of limited access programs. In determining crab processing quota shares, the NPFMC failed to adequately characterize present participation in its analysis, disregarding the most current three years of participation. The net result of this omission is to award processing privileges to AFA processors in excess of the processing sideboard caps stipulated as a condition of the benefits conferred by the AFA. This windfall to the large, often multi-national, AFA processors comes at the expense of our small, domestic processing operation.

In conclusion, we request that any implementing legislation for the North Pacific Council's crab rationalization plan include a "grandfather provision" to reflect Blue North Fisheries' present participation in crab processing. Without such a grandfather provision, the NPFMC plan has the effect of penalizing Blue North for reasonable reliance on the AFA sideboards. Specifically, Blue North would like to have sufficient processing quota shares to enable its processing vessel to process the catch of its commonly owned catcher vessels. This solution will correct the unfairness resulting from the Council's approach and compensate for the Council's failure to adequately address the requirements of the Magnuson-Stevens Act regarding present participation. The amount provided to Blue North under an amendment like this would be less than 1.5 percent of the total amount of the crab processing quota shares, most of which is allocated to large, economically advantaged shoreside processors. With this adjustment, Blue North Fisheries would fully support the crab rationalization program recommended by the North Pacific Fishery Management Council.

Thank you for the opportunity to submit this statement for the hearing record.

PREPARED STATEMENT OF ROBERT L. CHEVALIER, SITKA, AK

U.S. Senate Committee on Commerce, Science, and Transportation
 Senator JOHN MCCAIN, Chairman

Mr. Chairman:

I believe that there are grave dangers to the United States inherent in the Crab Rationalization Plan being considered by the North Pacific Fishery Management Council. The domestic issues of socioeconomic violence and antitrust law violations are bad enough; the international implications are truly frightening, and the U.S. may be in danger of giving away control of its fisheries and oceans simply by adapting the processor shares provisions of the Crab Rationalization Plan.

Under the Individual Fishing Quota plan, at present used to manage longline fisheries in the Gulf of Alaska and the Bering Sea, anyone wishing to purchase quota and prosecute a fishery must be an American citizen, and MUST, under pain of ultimately forfeiting all fishing rights, obey all regulations set forth by managing agencies designated by the Magnuson-Stevens Act. However, quota shares given to processors will become simply a business asset controlled by the owner of the processing facility, many of whom are foreign or multinational corporations. Under the provisions of GATT the holder of resource assets may have rights which supercede those of the state or Federal governments, and the U.S. may very well lose the ability to manage the fisheries in question: the provision of so-called free trade will supercede all matters of conservation or American utilization of marine resources.

In short, the processor share provisions of the Rationalization Plan may destroy the Magnuson Steven Act, and all American fisheries.

Respectfully Submitted,

ROBERT L. CHEVALIER

PREPARED STATEMENT OF DOROTHY CHILDERS, EXECUTIVE DIRECTOR,
ALASKA MARINE CONSERVATION COUNCIL

Chairman McCain, Senator Stevens and members of the Committee:

Thank you for holding today's hearing on processing quota and the proposed Bering Sea crab rationalization plan. A decision by Congress regarding authorization of processing quota is clearly of major significance in terms of future U.S. fisheries management policy.

The Alaska Marine Conservation Council (AMCC) is a community-based organization of fishermen, traditional subsistence harvesters, scientists, small business owners, families and others concerned about the health and diversity of our marine ecosystems.

AMCC supports rationalization of the Bering Sea crab fisheries. We are also working at the North Pacific Fishery Management Council to advance conservation and community benefits of groundfish rationalization plans that are currently under development in Alaska. We do not support processing quota as an element of rationalization because of the controlling effect this system would have on markets, fishing families, communities and the public process for managing the public's fishery resources.

Under the proposed Bering sea crab plan, the fishery would be managed under a quota system in which vessel owners and fishermen would be allocated individual fishing quotas (IFQs) and seafood processors would be awarded processing quotas to buy and process the catch. The proposed "two-pie" plan would require fishermen to sell at least 90 percent of their catch only to processing companies holding processing quota.

Processing quota is an anti-competitive system in which the government would allocate market share to certain corporations. Processing quota will limit who can do business to a select pool of quota holders. About 90 percent of the shares would be allocated to 12 out of the 30 eligible companies and will allow for significant quota consolidation through transfers, leasing or buying out other companies holding quota. There are no effective limits on how much processing quota a single corporation could control.

As a conservation organization, AMCC is involved in the processing quota debate as a matter of public policy because it speaks to governance of the public's fishery resources and the future face of the seafood industry. Our objective is to promote fishery management systems that ensure wise conservation management for long-term sustainability of fish, ocean ecosystems and our communities—healthy fisheries and healthy communities go hand-in-hand. The allocation of processing quota goes far beyond the kinds of allocation decisions regularly made by regional councils. We believe processing quota will lead to a concentration of control by processing corporations that will tip the scale, diminishing the role of community voices in the management of our resources. For fishery-dependent communities, processing quota does not offer a safety net but is rather a political accommodation that over time will create more problems than it solves. Certainly concerns raised by community entities regarding inadequate protections in the Bering Sea crab plan bear this out.

The NPFMC has a huge and time-consuming responsibility for the conservation management of our fisheries. The Magnuson-Stevens Act authorizes regional councils to manage the harvesting sector in accordance with complex rules associated with the biological needs of the fish and ocean ecosystems along with socio-economic considerations related to limited access and allocation between harvesters. Fishery managers should not also be tasked with designing and managing market systems

for fish *after* they are caught. Although many hours have been spent developing the Bering Sea crab plan, we remain concerned about the degree of scrutiny applied to the processing quota component:

- The North Pacific fishery managers' deliberations on the crab plan have not included a discussion on what problems processing quota is expected to resolve or what alternatives might be suitable to address them. For example, do the relatively small number of processing companies that will receive quota require a perpetual endowment of market share? Or are their problems related to being able to weather a short-term transition from an open access fishery to a slower-paced quota system for harvesters?
- The Senate Subcommittee on Oceans and Fisheries requested a report from the Government Accounting Office (GAO) reviewing the "economic effect of the IFQ program on Alaskan halibut and sablefish processors."¹ The report revealed clear weaknesses in the one economic study that has been used as the rationale for processing quota. This study concluded that IFQs gave fishermen more bargaining power and caused processors to lose market share, profit margin or go out of business.

The GAO reported that they could not determine what the effects of halibut/sablefish IFQs were on processors and to what degree IFQs caused changes in the processing sector.

"... we identified a number of problems with the study's methodology and scope that brings into question the reliability of the study's estimates. These problems include (1) the pre- and post-IFQ time periods do not provide an accurate measure of processors' economic welfare, (2) the study's results may not be representative of the industry as a whole, and (3) the document requesting economic information from processors may have biased participant response. The study's authors acknowledged that examining the pre- and post-IFQ impacts on the processing sector does not necessarily imply that the IFQ program alone caused these effects." GAO p. 25.

"... the document requesting economic information from processors may have had biased participant responses. In the preamble to the survey document, participants were told, among other things, that the purpose of the study was to test the theory that a harvester-only quota allocation transfers wealth from processors to harvesters and that the survey's results would be used to assist in designing future IFQ or other fishery rationalization programs. Such statements leave little doubt as to how responses could benefit or harm processors with economic interests in other fisheries. According to standard economic research practice, these types of statements are to be avoided when designing a survey as they can influence results." GAO p. 27.

"Along with an increase in buyer-broker halibut purchases, there was a decrease in the number of individual shore-based plants that processed halibut and sablefish. While some plants stopped processing halibut and sablefish, others decided it was beneficial to start. Between 1995 and 2001 ... 68 plants stopped processing halibut and 56 started, resulting in a net decrease of 12 plants. Similarly, 54 plants stopped processing sablefish and 40 started, resulting in a net decline of 14 plants." GAO p. 23.

"The IFQ program, however, did not necessarily cause a plant to stop processing halibut and sablefish. According to industry and government officials, some plants stopped processing halibut or sablefish because the plant was sold to another processor, the plant closed for personal reasons, plant management made poor business decisions, or the plant burned down." GAO p. 23.

The North Pacific Fishery Management Council recommendation to Congress has not taken the GAO report into account.

These concerns notwithstanding, we very much recognize the important role that the processing sector fills in our communities. The question of whether or not Congress should legalize processing quota should not be reduced to a feud between processors and fishermen with communities caught in the middle. Rather than asking what it will take to get fishermen and communities to accept processing quota, Congress should ask a completely different question: What is the appropriate way to

¹ GAO. 2002. *Individual Fishing Quotas, Better Information Could Improve Program Management*. The full report is available at www.gao.gov.

support each sector of the seafood industry in order to better serve (1) fisheries conservation, (2) stability of our communities, and (3) preservation of healthy markets and free enterprise?

To that end, we urge Congress to look closely at the issues facing the processing sector and to pursue other ways to address them in a manner that preserves competition, encourages innovation and protects communities. A decision to authorize processing quota in Bering Sea crab fisheries will establish a precedent that will be hard to contain in other Alaskan fisheries or beyond.

Thank you for the opportunity to share our perspective on processing quota with the Committee.

PREPARED STATEMENT OF KALE GARCIA, OWNER-OPERATOR F/V AQUILA

Submitted to U.S. Senate Committee on Commerce, Science, and Transportation
 Senator JOHN MCCAIN, Chairman
 Senator TED STEVENS, Presiding
 May 20, 2003

Senators,

I have been participating in the Bering Sea, Bristol Bay crab fisheries since 1980. I just wanted to go explore Alaska and getting there was on a Bering Sea bound, crab catcher-processor, hired on as a processor. In that same season, I was able to fill in as a deck hand on a crab vessel. I got off and swore I'd never do that again! I began working my way up to Captain, as it didn't take long to figure out where I wanted to work on a crabber. Since then I've rarely missed a season.

As an owner operator, I have now come around in full support of crab rationalization via the industry funded buyback and IFQ's. I believe this will dramatically improve the safety of the lives at sea and will help the crab stocks as the fishery will be approached with a different mind set. It will change the way I fish by allowing me to time the weather and tides for safer working conditions. This will also allow more soak time on the gear which will reduce and possibly eliminate the incidental by-catch of smaller juvenile crabs. This will definitely have a positive effect on the fishery and most everyone associated with the crab industry.

I am adamantly opposed to any type of processor quota share. If it was decided to go along with the 90:10 two pie system, this would possibly take away the above mentioned positive impacts on the industry as I would be told when the processor would be buying crab, or when I could go fishing. It is currently illegal under Alaska state law for me to bring in live crab to one port and leave to take my ten percent somewhere else. It would probably not be economically feasible. If I'm the owner of the boat and permit to go catch the crab, then I should own the crab up until the time they are sold. However, if I have to sell 90 percent to a predetermined market then who actually owns the product? How am I to get a fair price? Processors have the opportunity to own catcher vessels and harvester shares now. In fact there is a significant amount of vessels that are processor owned.

I am not interested in remaining in the industry under a two pie system. I have 23 years of hard work and everything financially at stake in the crab industry. There would be a huge devaluation in vessels and IFQs under the current proposed plan. When the boat tenders salmon in the summertime it is a full on family job for myself, my wife and kids. I am not sure where I would start over or what I would do. I do think there are many other alternatives to this absurdly proposed idea.

Thank You,

KALE GARCIA,
 Owner-Operator F/V Aquila.

STATEMENT OF ERIN D. HARRINGTON, KODIAK, AK

Senator JOHN MCCAIN,
 Committee on Commerce, Science, and Transportation,
 U.S. Senate,
 Washington, DC.

Dear Senator McCain and Committee Members;

I'm writing to you to express my concerns about the proposed Bering Sea/Aleutian Islands crab rationalization plan. In particular, I feel it is important that I express my *complete opposition* to processor quota as a tool for fishery rationalization.

I believe that the award of processing quota to Alaskan processors through this plan will result in numerous side effects that will be deleterious to the commercial fishing industry in Alaska. In my opinion, the most important of these effects will be

- the restriction of future development of entrepreneurial seafood marketing businesses by fishermen or next-generation processors;
- the establishment of a precedent that will be carried through to rationalization plans in other fisheries, where processor quota is entirely inappropriate and would result in the degradation of small communities and forward-thinking businesses; and
- a protectionist system that locks a set number of corporations (primarily foreign-owned) into the Alaskan fishing industry, and renders them bullet-proof from the natural fluctuations of the market-based system that would otherwise compel them to innovate and improve in order to succeed.

My family has been involved in fisheries in Alaska and Massachusetts for two generations. I personally have fished since I was a little girl. In recent years, I have broadened my involvement in the fishing industry as a reporter for several trade publications, as the project leader for a large fishermen's organization in Alaska, and now as a graduate student in Seafood Marketing and Economics at the University of Alaska. I am writing this letter on behalf of my parents and my brother, all of whom are directly involved in the fishing industry.

Senator, I'm sure that you and your colleagues are well-versed on the impact of corporate consolidation in the world food systems on family farms. You also have likely become aware of the development of farmers' cooperatives, and the [The end of this letter was unavailable at time of printing.]

PREPARED STATEMENT OF ROBERT HALVORSEN, PROFESSOR OF ECONOMICS,
DEPARTMENT OF ECONOMICS, UNIVERSITY OF WASHINGTON

THE ECONOMIC ANALYSIS OF INDIVIDUAL PROCESSOR QUOTAS

On behalf of the City of Kodiak, I am submitting this written testimony to the record of the May 20, 2003 Hearing on Bering Sea/Aleutian Island Crab Rationalization before the Committee on Commerce, Science, and Transportation of the United States Senate. My testimony first addresses the general issue of whether fishery rationalization programs should include explicit mechanisms to protect processors from possible adverse effects. It then discusses one specific mechanism, Individual Processor Quota (IPQ), which has been recommended for use in the Bering Sea/Aleutian Islands (BSAI) crab fisheries. I previously presented testimony on these topics to the February 13, 2002 Oversight Hearing on Individual Fishing Quotas before the House Subcommittee on Fisheries Conservation, Wildlife and Oceans. My testimony in the present statement has been revised and expanded in the light of information and analyses that have become available since that time.

The City of Kodiak has also asked me to submit testimony for the record on the experience to date with rationalization of the BSAI inshore pollock fishery under the American Fisheries Act of 1998, and the implications that can be appropriately drawn regarding the proposed rationalization program for the BSAI crab fisheries. My testimony on this topic is being submitted separately in an additional statement for the record.

Executive Summary

My analysis of the likelihood of fishery rationalization programs having adverse effects on processors begins by considering the importance of market structure in determining the outcomes of a rationalization program. To illustrate the importance of market structure and the balance of bargaining power on the outcomes of rationalization programs, I review a recent analysis of the BSAI inshore pollock fishery that was prepared for the North Pacific Fishery Management Council (Halvorsen, Khalil, and Lawarree 2000). The analysis demonstrates that market structure is critical in determining the distributive outcomes of rationalization programs.

I then review the available evidence on whether processors have in fact incurred losses as a result of fishery rationalization programs. There has been surprisingly little empirical research on this issue. The strongest conclusion that appears to be supported by the existing research is that some processors are made worse off and some are made better off by the implementation of an Individual Fishing Quota (IFQ) program. A recent unpublished study of the North Pacific Halibut and Sablefish IFQ program (Matulich and Clark 2002) does claim that processors in that fish-

ery experienced large losses. However, a review of this study by the General Accounting Office concluded that problems with the study's methodology and scope bring into question the reliability of its results. My own review of this study leads to the even more negative conclusion that critical defects in its theoretical and empirical methodology invalidate its results.

Next I discuss the rationales that have been advanced for compensating processors for any losses that they may incur as the result of a rationalization program. My primary emphasis is on the argument that if processors are not compensated they may block the implementation of a rationalization program, with the result that the potential efficiency gains from the program cannot be realized. I note that there are several problems with this argument. First, attempts to block a program unless distributive outcomes are altered may simply reflect an attempt to increase the size of already positive net benefits, rather than to avoid losses. Second, if harvesters become concerned that the attempt to keep processors safe from harm will result in losses for harvesters, they may also try to block implementation. Lastly, when efforts to hinder implementation are rewarded, an incentive is created for increased obstructive behavior in the future.

Following this general discussion of the effects of rationalization programs on processors, I consider two recently proposed concepts that have received a considerable amount of discussion in the context of rationalization programs in North Pacific fisheries. One is that rationalization programs should satisfy the criterion of being "Pareto safe," which requires that no fishery entities be made worse as a result of rationalization. The other is that an IFQ program should also involve the allocation of Individual Processor Quotas (IPQs), as in the proposed program for the BSAI crab fisheries.

The inclusion of both IFQs and IPQs in a rationalization program was originally referred to as a "two-pie" system. The concepts of Pareto safety and two-pie programs are linked in that the two-pie approach has been advocated by Matulich and Sever (1999) as a feasible way of achieving Pareto-safe rationalization in at least some policy-relevant situations. In particular, Matulich and Sever claimed to have shown that a two-pie allocation would be Pareto safe in a bilateral monopoly, that is, a fishery with only one harvester and one processor, and asserted that their analysis of this case would be applicable to the BSAI inshore pollock fishery because it "emulated" a bilateral monopoly.

Neither of these claims is correct. First, as discussed in Halvorsen, Khalil, and Lawarree (2000), the characterization of the BSAI inshore pollock fishery as a bilateral monopoly was highly misleading because it ignored critical elements of the inshore fishery's market structure. Second, and more importantly, my testimony shows in section 6 that the claim that a two-pie allocation is guaranteed to be Pareto safe in a bilateral monopoly is incorrect. Therefore, even if a real-world fishery could be found that was a bilateral monopoly, there is no reason to believe that a two-pie allocation would be Pareto safe.

Since there are no other market structures for which the Pareto safety of a policy feasible two-pie system has even been asserted, no credence should be given to claims that a two-pie system is a "policy-superior initial allocation of rights" (Matulich, Mittelhammer, and Reberte 1996, page 112). Instead, the inclusion of IPQs in a fishery rationalization program should be viewed as simply one possible mechanism for enhancing outcomes for processors, bearing in mind that the possible outcomes under IPQs have received very little credible economic analysis and are untested by experience in any real-world fishery.

I conclude that evaluations of the appropriateness of allocating IPQs as part of a specific rationalization program should include (i) an assessment of whether compensation for processors is desirable, given the characteristics of the specific fishery, in particular the balance of bargaining power, and (ii) the relative merits of IPQs versus other possible compensation programs, given the characteristics of the specific fishery.

1. Introduction

My testimony first addresses the general issue of whether fishery rationalization programs should include explicit mechanisms to protect processors from possible adverse effects. It then discusses one specific mechanism, Individual Processor Quota (IPQ), which has been recommended for use in the Bering Sea/Aleutian Islands (BSAI) crab fisheries. I will discuss in turn the conditions determining the probability, extent, and incidence of possible adverse effects of rationalization programs on processors, and the efficiency and equity rationales that have been advanced in favor of ensuring that processors are protected from any such effects.

I will pay particular attention to two recently developed concepts that have received a considerable amount of discussion in the context of rationalization pro-

grams in North Pacific fisheries. One is that rationalization programs should satisfy the criterion of being “Pareto safe,” which requires that no fishery entities be made worse as a result of rationalization. The other is that an IFQ program should also involve the allocation of Individual Processor Quotas (IPQs) in what has come to be known as the “two-pie” approach. The two concepts are linked in that the two-pie system has been put forward as a feasible way of achieving Pareto-safe rationalization in at least some policy-relevant situations by Professor Scott Matulich and his co-authors (Matulich, Mittelhamner, and Reberte 1996, Matulich and Sever 1999).

2. Theoretical Analysis of the Effects of IFQ Programs on Processors

Unless specified otherwise, the phrase “IFQ program” will refer to a rationalization program based on the allocation of quota shares for harvesting only, and in which the IFQs are allocated only to harvesters. This is in contrast to possible rationalization programs that include IFQs but also make explicit provision for compensating processors for possible negative effects on them, either by allocating part of the total harvesting quota shares to them or by incorporating processing quotas as well, as in a “two-pie” system.

Also, the phrase “processors” will refer to the processors that have been operating in the fishery prior to the time that it is rationalized. One common result of rationalization is the entry of new processors, who are obviously made better off by the opportunities created by rationalization. An appraisal of the overall effect of a rationalization program on the processing sector should clearly take the positive effects on new processors into account as well. However, my review of the theoretical analysis of the effects of IFQ programs on processors will concentrate on the effects on previously operating processors only.

In analyzing and predicting the effects of an IFQ program on the well-being of incumbent processors, it is critical to take into account the specific conditions of the fishery being considered. One important set of conditions concerns the market structure of the fishery.

Implications of alternative models of market structure

The first analyses to emphasize the possibility of processors incurring losses as a result of the introduction of an IFQ program (Plesha and Riley 1992, Matulich, Mittelhamner and Reberte 1996) assumed that the fishery was perfectly competitive, the end of the race for fish created excess processing capacity with no alternative uses, and the firms in the industry were not vertically integrated (that is, processors did not own harvesters or vice versa). Given these assumptions, they conclude that processors would be made worse off by an IFQ program because they would fail to obtain any of the rents from fish and would also lose part of the value of their capital.

However, if all other circumstances were the same, but processors and harvesters were vertically integrated (as for example in a fishery comprising only factory trawlers), then processors could not be made worse off because they would receive the full benefits of the rationalization program (Matulich and Sever 1999). In a mixed case, with some processors vertically integrated and others not, the incidence of gains and losses might differ by type of entity, with non-integrated processors being more susceptible to suffering losses than integrated ones (Halvorsen, Khalil, and Lawarree 2000).

Perfect competition is one of the standard models used in economic analyses, in large part because of its analytical simplicity. Examples of other standard models familiar from economic theory include monopoly (a single harvester facing perfectly competitive processors), a monopsony (a single processor facing perfectly competitive harvesters), and a bilateral monopoly (a single harvester facing a single processor). In the first case, the monopolist would obtain all the net benefits of the fishery, in the second case the monopsonist would, and in the third case the division of net benefits would depend, among other things, on the alternative opportunities available to the participants.

These three standard models also have the advantage of analytical simplicity, but are not in general directly applicable to the analysis of the effects of IFQ programs for two reasons. First, the characteristics of the market structures of real-world fisheries are more complex than such simple theoretical models imply. And second, if a fishery did conform to one of these model specifications, then it would be expected to be capable of maximizing aggregate net benefits on its own, which would preclude the development of a race for fish. For instance, a monopolist harvester would optimally allocate its fleet over time rather than engaging in a race to fish between its own vessels. Accordingly, rationalization programs such as an IFQ program would be redundant.

However, consideration of these standard models does illustrate the wide range of results possible with respect to the division of the net benefits of a fishery, and therefore the need to take market structure into account when assessing the effects of an IFQ program on the participants in the fishery. Also, to the extent that a fishery being considered for an IFQ program has characteristics similar to a standard model, some inferences may be drawn about the probability that processors could be adversely affected by the implementation of the program. For example, other things equal, implementing an IFQ program in a fishery with very few processors and many harvesters is less likely to result in processor losses than in a fishery with many processors and harvesters.

More generally, these examples suggest the importance of bargaining power in determining the distributive effects of an IFQ program, and therefore the need to use the tools of game theory to assess the possible outcomes of a particular IFQ program. These tools include cooperative bargaining theory (e.g., Nash 1953) and non-cooperative bargaining theory (e.g., Osborne and Rubinstein 1990). A recent example of an analysis of a fishery using cooperative and non-cooperative bargaining theory is Halvorsen, Khalil, and Lawarree (2000).

Halvorsen, Khalil, and Lawarree Study

The analysis by Halvorsen, Khalil, and Lawarree was conducted on behalf of the North Pacific Fishery Management Council and considered the prospective distribution of net benefits from rationalization of the inshore sector of the Bering Sea/Aleutian Islands (BSAI) fishery under the American Fisheries Act (AFA). Although most of the specific results of the analysis are directly applicable only to that particular fishery, a brief review of the main elements of the analysis is useful to illustrate the issues involved. The review also will be useful as background for the evaluation of the two-pie allocation, which was initially discussed in the context of the inshore pollock fishery.

Applicability of standard economic models:

Halvorsen, Khalil, and Lawarree evaluated, and rejected, the suitability of several standard economic models that had been proposed for application in the inshore pollock fishery. For example, Wilen (1998) had argued that the inshore fishery was best characterized as a single monopsony, in part because of the dominant position of two firms in the main market for surimi products. Halvorsen, Khalil, and Lawarree concluded that Wilen's analysis substantiated the hypothesis that processors had significant market power, but that the fishery was not a monopsony.

One reason given for rejecting the conclusion of monopsony was that for the processors to behave as a monopsony they would have to overcome serious economic and legal difficulties associated with being a successful cartel. Also, there was evidence that the processors had not always acted in a united way, as they would have if they were a monopsony. For example, when the Bering Sea Marketing Association (BSMA) went on strike against several processors in 1999, the largest processor in the fishery, which was not a party to the negotiations, had its fleet continue to fish, making prolongation of the strike too costly to both the members of the BSMA and their processors. The existence of the BSMA also argued against the conclusion that the inshore sector was a monopsony, because its collective bargaining is not consistent with harvesters acting as passive price takers. Lastly, as noted above, an effective monopsony would have been capable of substantially rationalizing the fishery without the intervention of the AFA.

The existence of the BSMA was considered especially important by Matulich and Sever (1999), who argued that it implied that the inshore sector was a single bilateral monopoly. They claimed that the dissemination of price information to each processor by the marketing association during the course of negotiations allowed the processors to unite even though they were not sharing information among themselves. In other words, Matulich and Sever were claiming that the BSMA, acting as the representative of independent catcher vessels, unwittingly made it possible for the processors to unite against its own clients.

One serious factual problem with Matulich and Sever's analysis is that the BSMA did not represent all of the independent catcher vessels, and the largest processor was not a party to the negotiations. Also, the theoretical analysis left two critical questions unanswered. First, why would the marketing association not take advantage of the processors' lack of communication and play one against the other by misrepresenting on prices be sufficient to allow the processors to overcome the other economic and legal difficulties hindering their behavior as a single agent?

Another critical factual problem with Matulich and Sever's analysis is that it ignored the existence of substantial vertical integration in the fishery. Based on Na-

tional Marine Fishery Service data, processor controlled vessels harvested approximately half the total allocation of catch to the inshore sector. This makes the existence of a united harvesting sector implausible, because processor controlled vessels would be subject to conflict of interest issues and could not be expected to consider only the effects on harvesters of the results of negotiations with processors.

Furthermore, the degree of vertical integration was not uniform across processors. For example, two of the largest processors, which together accounted for about two-fifths of the total inshore catch, were estimated to obtain more than eighty percent of their fish from their own processor controlled vessels, whereas another large processor, with about one-fourth of the total inshore allocation, obtained virtually all of its fish from independent catcher vessels. The differences in the degree of vertical integration implied differences in the effects of a given negotiated outcome, complicating any effort of the processors or harvesters to act in unison.

Based on their assumption that the inshore sector was a bilateral monopoly, Matulich and Sever (1999) recommended that a two-pie rationalization approach be implemented, and claimed that it would result in a Pareto-safe distribution of net benefits. However, as discussed in section 6 below, Matulich and Sever's theoretical analysis of the two-pie system under bilateral monopoly is fundamentally flawed, and their conclusion that it would guarantee a Pareto safe outcome is simply incorrect. Furthermore, even if their analysis of a two-pie program under bilateral monopoly had been correct in theory, advocacy of this particular policy approach for this specific fishery was based on a highly misleading characterization of the fishery's market structure.

Bargaining power:

Halvorsen, Khalil, and Lawarree (2000) used concepts from game theory to evaluate the nature of competition in the industry, and the resulting balance of bargaining power. They concluded that the processors had a number of important bargaining advantages. The large portion of the harvest caught by processor controlled vessels reduced the reliance of the vertically integrated processors on supply from independent catcher vessels, while also providing processors an informational advantage because the independent catcher vessels they bargained with did not own inshore processing plants. Also, because the processing sector was highly concentrated and new entry was prohibited under the AFA, processors would be expected to realize that aggressive tactics yielding short-term gains were unlikely to be profitable in the long-run. Independent catcher vessels did have one bargaining advantage in that they were able to legally bargain as a group. However, it was concluded that on balance the processors had substantially more bargaining power than independent catcher vessels.

The Halvorsen, Khalil, and Lawarree analysis noted that rationalization of the inshore pollock fishery was expected to result in a large increase in the effective amount of processing capacity, which would provide more opportunities for processors to engage in aggressive competition, but the long-term incentives for refraining from doing so would remain. Therefore they concluded that the rationalized fishery would be characterized by "moderate but not cutthroat competition" among processors.

These conclusions concerning bargaining power were then applied to analyze two alternative rationalization programs being considered by the Council: processor-specific cooperatives (an implicit processor compensation mechanism) and the Dooley-Hall proposal for non-processor-specific cooperatives (an approximation to IFQs). Halvorsen, Khalil, and Lawarree concluded that there was a significant probability that some independent catcher vessels would be adversely affected by the requirement of processor specific cooperatives, but the positive net benefits from the reallocation aspect of the AFA, as well as the potential net economic benefits from rationalization of the fishery, decreased the likelihood that they would be adversely affected relative to the situation pre-AFA. They also concluded that the Dooley-Hall proposal would be more favorable to independent catcher vessels, and less favorable to processors, than the processor-specific cooperatives.

Their conclusions concerning the relative bargaining power of harvesters and processors in the inshore BSAI pollock fishery would also have been relevant to the analysis of the effects on processors of alternative rationalization programs including IFQs. However, it is important to note that the conclusions were based on the conditions in this specific fishery. Because market structure is critical in determining the distributive outcomes of IFQ programs, and the characteristics of market structure differ greatly across fisheries, the distributive effects of rationalization policies require fishery specific analysis.

The requirement of rigorous, fishery-specific, analysis of the probable effects of IFQ programs is especially important because very little information is available on

the actual effects of previous programs. The following section reviews several recent studies that have evaluated the actual effects on processors of previous IFQ programs.

3. Empirical Analysis of the Effects of IFQ Programs on Processors

There has been surprisingly little empirical research on the actual effects of IFQ programs on the processing sector. However, there are three studies that have examined the effects of IFQ programs in the United States and British Columbia halibut fisheries. All three studies document the fact that there were many winners from the programs in the form of new processors who entered the fisheries in order to benefit from the opportunities created by the IFQ programs. However, one study differs from the others with respect to its conclusions concerning the effects of the IFQ programs on processors that had been operating in the fishery before the programs were adopted.

British Columbia Study

The British Columbia halibut fishery was studied by Casey *et al.*, (1995). The IFQ program was implemented in May 1991 and the study is based on the results of in-person interviews with processors in September 1993 and a mail survey of harvesters in May 1994. The study documents large net economic benefits from rationalization of this fishery, including the ability to switch from mostly frozen products to more highly valued fresh fish. Ex vessel price is estimated to have increased by more than half. The survey of processors indicated that some of the processors that had been operating prior to the IFQ program felt that it had made them better off while some felt it had made them worse off.

General Accounting Office Study

The GAO study (United States General Accounting Office 2002) based its determination of the effect of IFQ programs on processors on an assessment of the economic effects of the North Pacific halibut and sablefish IFQ program. The study methodology included analysis of data from the National Marine Fisheries Service and the Alaskan Department of Fish and Game, interviews with fishery participants, and a review of a study commissioned by the Alaskan Department of Fish and Game (Matulich and Clark 2002).

The GAO's summary of its main conclusions was (page 20): "Some processors were adversely affected by the implementation of the halibut and sablefish IFQ program while others benefited. However, quantifying the economic effects of the IFQ program on processors is difficult because much of the data needed to measure changes in profitability are proprietary. Furthermore, other factors besides the IFQ program may lead to changes in processors' economic situation."

The GAO's review noted that the Matulich and Clark study of the halibut and sablefish IFQ program had concluded that processors were hurt significantly by the IFQ program. However, the GAO also noted that it could not validate or replicate the study's results, and that it had identified a number of problems with the study's methodology and scope that brought into question the reliability of the study's estimates. Among the problems identified by the GAO were: the study's assumption that all costs except labor and material inputs were constant over a seven year period was clearly unjustified, the choice of base year exaggerated the size of any negative effect, the results might not be representative of the industry as a whole, and the document requesting economic information from processors might have biased participant responses.

In April 2002 I presented a critique of the Matulich and Clark study in public testimony before the North Pacific Fishery Management Council. The conclusions I reached concerning the reliability of the study's results were even more negative than those reached by the GAO. My analysis of the study is summarized in the following sub section.

Matulich and Clark Study

The Matulich and Clark study assumes that the effect of the IFQ program on processors' economic welfare can be measured as the change in "quasi rents" retained by processors, which they define as the change in revenues in excess of all variable processing costs. However, the use of this measure to evaluate welfare changes is not consistent with economic theory and would not provide reliable estimates of changes in welfare even if it were estimated accurately. Furthermore, their empirical methodology is deeply flawed and would be incapable of providing reliable estimates of welfare change even if a theoretically correct measure were being used. In short, the study measures the wrong thing, and measures it poorly.

Theoretical assumptions:

Quasi-rents are fundamentally a short-run concept. The short-run is defined as the period of time during which at least one of the firm's input quantities cannot be changed. It should be noted that, although it is customary for expository reasons to use capital inputs as examples of fixed inputs, and labor and materials inputs as examples of variable inputs, some capital inputs may in fact be variable in the short-run (*e.g.*, motor vehicles, personal computers), and some labor and materials inputs may be fixed (*e.g.*, because of transportation costs, job-specific human capital, or contractual commitments).

The difference in the short-run between the firm's total revenue and total expenditures on variable inputs is defined as the quasi-rent to the fixed inputs. That is, the amount in excess of the amount required to keep the fixed inputs in their current use. Thus a decrease in quasi-rents would indicate a decrease in the firms' welfare in the short-run.

In the long-run, by definition, all inputs are variable, and the amount required to keep inputs in their current use is equal to what they could earn elsewhere, including a normal rate of return to capital. Therefore the relevant concept for measuring a firm's welfare change in the long-run is that of economic profit. Quasi-rents would have no operational meaning, being simply equal to economic profit if correctly measured.

There is no direct connection between the economic concepts of the short-and long-run and calendar time. Instead, the amount of time required before all inputs can be considered variable will vary across industries, although it is plausible that in any given industry the number of inputs that are fixed will decrease with the length of time being considered.

Thus the first-step in attempting to use quasi-rent data to measure changes in a firm's welfare should be a careful evaluation of which, if any, inputs are fixed, given the period of time over which changes are being evaluated. Simply assuming that labor and material inputs are variable and all other inputs are fixed, as done by Matulich and Clark, is not adequate even for a period as short as a year, and is clearly unjustified for the seven-year period over which they evaluated changes.

To illustrate the type of error their assumption can introduce in the measurement of welfare change, consider the results of applying Matulich and Clark's definition of quasi-rents to evaluate changes that are distant enough in time for all inputs to be variable. Further suppose for ease of exposition that in both periods the price of processed fish is \$1.00, the cost of raw fish is \$0.40, and average cost is \$0.50. Thus economic profit per unit would be equal to \$0.10 in both periods and the firm's welfare would be unchanged. Nevertheless, if the firm had become more labor intensive over time, the unit quasi-rent as calculated by Matulich and Clark would have indicated a decrease in welfare. For example, if average costs were split equally between capital and labor costs in the first period, but labor costs accounted for 80 percent of average costs in the second period, the unit quasi-rent as calculated by Matulich and Clark would have decreased from \$0.35 to \$0.20, a decrease of 43 percent.

While this example is hypothetical, it does illustrate that quasi-rent as evaluated by Matulich and Clark does not provide reliable estimates of changes in welfare over longer periods of time. More specifically, increases in labor intensity, other things equal, will result in decreases in welfare as evaluated by their measure.

Lastly, even if reliable estimates of welfare changes were obtained, their normative significance would depend in part on the benchmark on which they were based. Matulich and Clark choose as their benchmark the welfare of processors in 1992–1993, asserting that this period represented an open-access long-run equilibrium. One reason for doubting this assumption is that it is not clear that the fishery would have stabilized at the 1992 levels in the absence of an IFQ program. If not, then a more appropriate benchmark would be the counterfactual case of how the fishery would have developed in the absence of a program.

More directly, the 1992–1993 experience reflected the fact that fishery participants expected an IFQ program to be implemented, and this provided incentives for different behavior than would have occurred in an open-access equilibrium. For example, harvesters might have considered it worthwhile to fish at a loss in order to try to capture or protect catch history.

Empirical methodology:

Matulich and Clark obtained the data used to estimate changes in quasi-rents from a questionnaire distributed to a sample of processors. The principal types of data requested were total revenue, total raw fish cost, and total variable processing costs, defined as the aggregate of several specific cost elements, including custom processing fees, wage and housing costs for direct labor, and packaging and freight

costs. Data on total revenue and total raw fish cost were verifiable from Alaska Department of Fish and Game data, the data for variable processing costs were not.

Economists using survey research techniques have noted that the design of a questionnaire can result in a number of different types of biases. In particular, respondents may engage in strategic misrepresentation of the data if it is clearly in their economic interests to do so. Therefore, one of the most important protocols for survey design is to avoid providing material that establishes a clear link between a participant's responses and his or her economic interests.

The survey design used by Matulich and Clark clearly violates this protocol. The material accompanying the questionnaire noted that Professor Matulich was the principal investigator, that he had written an article showing that the type of program used for halibut and sablefish transfers wealth from processors to harvesters, and that the purpose of this survey was to see if that was true empirically. It was further noted that the purpose of the study was to obtain information for use in evaluating future rationalization programs; in particular to help policy makers to avoid unintended distributive effects, and that distributional impacts would be based on measuring changes in processors' total revenue minus various processing costs.

This material would have made it clear to the processors how their responses could benefit or harm them in the future when other fisheries in which they participated were rationalized, and this would have provided an incentive for strategic misrepresentation. At a minimum, processors that had benefited from the IFQ program would realize that reporting this might be harmful to their future interests, and therefore have simply not participated in the survey.

An important difficulty in assessing the treatment of a number of empirical issues is that the discussion in the report is often qualitative where it would normally be expected to be quantitative. Examples include the section on data problems where it is noted that it was "not uncommon" for aggregation problems to prevent accurately measuring variable processing costs, and that "some" firms were unable to access historical data. No information is provided on the number of firms that were eliminated from the sample for these reasons. Similarly, they report that there were a "few" instances where inventory issues were "problematic".

In addition, Matulich and Clark report that some firms were considered to be outliers, usually by exhibiting unrealistically high quasi-rents. These firms were contacted for an explanation, and if it was not satisfactory, the firm was dropped from the sample or its data replaced by the sample average. The number of firms considered outliers, how many were considered to report too high quasi-rents, how many justified their data, were dropped, or had their data replaced by sample averages, is not specified.

Lastly, and most surprisingly, Matulich and Clark do not report the number of participants included in the final data. They report that the number of buyers/processors asked to participate in the survey was 53 for halibut and 46 for sablefish, accounting for 88 percent to 96 percent of all fish purchased, and that the retained survey data accounts for 52 percent to 61 percent of fish purchased. Given the degree of concentration in these fisheries, this may or may not represent a substantial percentage of the number of total firms.

Matulich and Clark do note that the final sample does not include data for any firms that exited the fisheries, which accounted for one-fifth of the total 1992–1993 catch in both fisheries. Although these firms might be expected to have been less profitable than the surviving firms, they are assumed to have had the same quasi-rent share in 1992–1993 as the surviving firms. Similarly, surviving firms that lost market share are assumed to have had the same quasi-rent share as the firms increasing market share.

Matulich and Clark conclude from their analysis that 82 percent of the halibut processing sector (as measured by raw fish weight rather than number of firms) lost quasi-rents relative to the pre-IFQ period, with the average loss being 56 percent. Even more dramatic results are reported for the sablefish processing sector. However these results cannot be considered to be reflective of the actual effects on the economic welfare of processors. The basic problem with their approach is that the results depend on the estimates of total variable processing costs, which in turn depend on arbitrary, and unrealistic, assumptions concerning which inputs are variable over a seven-year time span. In addition, estimation of total variable costs conditional on these assumptions depends on survey data from processors, who can be expected to clearly realize that there are incentives for strategic misrepresentation.

4. Rationales for Compensation

As discussed in the previous two sections, there are no general theoretical or empirical grounds for concluding that processors as a whole are likely to be adversely

affected by the implementation of an IFQ program. However, it is possible that situations could arise where processors would be adversely affected. Therefore it is useful to consider whether it would be desirable to incorporate measures to prevent such adverse effects from occurring, or to compensate processors if they do occur. Arguments have been put forward for preventing processors from being harmed by rationalization programs based on considerations of both efficiency and equity. Each type of rationale will be considered in turn.

Efficiency

One rationale advanced for compensating processors for possible losses is that not doing so could have adverse consequences for economic efficiency by creating impediments to the implementation of efficiency-enhancing rationalization programs. This possible source of inefficiency is emphasized by Matulich, Mittelhammer, and Reberte (1996). Having concluded that processors could suffer losses as the result of the introduction of IFQs in a perfectly competitive fishery, they note (page 112), "These losses could promote political gridlock and jeopardize adoption of an ITQ policy unless they are fully compensated or redistribution is avoided by a policy-superior initial allocation of rights to both harvesters and processors."

This argument assumes that processors do not have enough economic bargaining power in rationalized fisheries to avoid losses, but do have enough political bargaining power to block efficiency-enhancing rationalization programs. However, as the Halvorsen, Khalil, and Lawarree analysis of the BSAI pollock fishery indicated, processors may in fact have more bargaining power than harvesters in real-world fisheries.

Therefore, a situation in which processors seek rent-enhancing mechanisms as the price of agreeing to rationalization programs may simply reflect the desire of processors to obtain a larger share of the net benefits the program would create, rather than that they are seeking to protect themselves from suffering losses. Under these circumstances, utilizing mechanisms to enhance the processors' share of the net benefits could actually create new impediments to the implementation of rationalization programs by causing harvesters to fear that they would lose out from the implementation of the program.

The history of the American Fisheries Act is instructive in this regard. Rationalization of the BSAI pollock fishery was based on the creation of harvesting cooperatives. Processors in the inshore sector expressed concern that cooperatives might put them at a bargaining disadvantage. In response, the AFA rules for cooperatives required that they be processor-specific, and that membership in the cooperative for each processor was limited to vessels that were qualified for that processor, as determined by where a catcher vessel had previously delivered the largest share of its total catch.

In response, an association of independent catcher vessel owners expressed concern that the AFA rules for inshore cooperatives would harm them because of the restrictions placed on where they could market their fish, and proposed an alternative set of rules known as the Dooley-Hall proposal. Resolution of this conflict required extensive hearings before the North Pacific Fisheries Management Council. In addition, concerns were raised about the effects of processor-specific cooperatives on small entities as defined in the Regulatory Flexibility Act.

Another possible disadvantage of responding to processors' resistance to the adoption of a rationalization program by incorporating mechanisms to enhance their position is that doing so might have adverse efficiency consequences in the longer run. If it appears that policy makers are willing to appease opponents of rationalization by enhancing their rewards, this will provide incentives for increased obstructive behavior in the future, and thereby imperil the implementation of rationalization programs in other fisheries.

Equity

The other principle rationale for compensating processors against possible losses is that it would be inequitable not to do so. For example, Plesha and Riley (1992) and Matulich, Mittelhammer, and Reberte (1996) argue that there is a Fifth Amendment "taking" issue if the rationalization of a fishery results in losses for processors.

Without attempting to address the implied legal issues, some observations can be made on whether investment losses from rationalization are inequitable from an economic point of view. It seems unlikely that the investments assumed to be at risk from rationalization were made with the anticipation that the race for fish was certain to be the long-run equilibrium outcome for the fishery in question. Faced with an uncertain future, processors' investment decisions can be assumed to have taken into account the possibility of various alternative scenarios, including regulatory policies to end the race for fish. Accordingly, investment decisions would be opti-

mized to reflect trade-offs between the various possible future outcomes. For example, there might be a trade-off between further increasing investment in capacity in order to secure competitive advantages by, for example, deterring the entry of new processing firms into the fishery, versus the advantage of having the smaller amount of capacity that would be optimal if the race for fish were ended. It is not clear why losses that had been anticipated to occur under a particular scenario should instead be compensated on equity grounds when that scenario turns out to be the actual outcome.

Another equity issue concerns the distribution of net benefits within the processing sector. For example, as noted above, in a processing sector comprising some firms that are vertically-integrated and some that are not, the non-integrated processors would be more susceptible to suffering losses from rationalization than would the integrated processors. But the choice to not be vertically-integrated presumably reflects a judgement by these firms that they obtained enough economic advantages by refraining from acquiring harvesting capacity to compensate for the increased risk of losses if the fishery were rationalized. Adopting a policy to compensate all processing firms for possible losses would change the anticipated benefits and costs of these business decisions after the fact and thereby effectively discriminate in favor of the non-integrated firms, partly at the cost of harvesters.

Matulich and Sever (1999) use the term "Pareto safe" to refer to the concept of a rationalization program that is "equitable in the sense of not redistributing status quo ante wealth of historical participants" (page 204). They then argue that if a rationalization program is not Pareto safe, "politically powerful interest groups may form to block a switch to ITQ management, jeopardizing the efficiency benefits of rights-based fishing (page 215). The desirability, and feasibility, of relying on the concept of Pareto safety in designing and evaluating fishery rationalization policies is discussed in the following section.

5. Pareto Safe Rationalization

Although the term "Pareto safe" appears to have originated in the writings of Matulich and his co-authors, essentially the same concept has been long known in the economic policy analysis literature as the Pareto criterion. "The logical criterion for proving that a policy change, or any other change, is beneficial was first stated by a nineteenth century Italian social scientist, Vilfredo Pareto. Pareto's rule is very simple: Program X improves the welfare of the society if it makes at least one person better off and no one worse off." (Gramlich 1990).

The recommendation by Matulich and his co-authors that fishery rationalization policies should be required to be Pareto safe is equivalent to saying that they should satisfy the Pareto criterion. However, the Pareto criterion only provides information on a policy's effect on economic welfare when the policy would result in no individual being made worse off. A policy that involved small losses to one individual, and large gains to many others, would fail the Pareto criterion, even though it might have a large positive effect on economic welfare. And virtually all feasible public policies result in at least one individual being made worse off.

This has led to the general rejection of the Pareto criterion as a practical basis for evaluating public policies. As Ng (1984, page 1033) summarizes, "The Pareto criterion is widely accepted as a sufficient condition for an improvement in social welfare. . . . However, most, if not all, changes in the real world involve making some better off and some (no matter how small the number) worse off. Thus the Pareto criterion in itself is of little practical use."

The practical difficulties of trying to implement Pareto safe fishery rationalization policies can be illustrated by considering the effects on individual harvesters of implementing an IFQ program. Matulich, Mittelhammer and Reberte (1996, page 112) indicate that an IFQ policy would be Pareto safe within the harvesting sector, because "endowing individual harvesters with fully transferable, permanent, and exclusive fishing rights is tantamount to assigning property rights over the fish stock . . . [an important benefit] . . . arises out of gains from free trade in which more efficient users of the resource are able to purchase rights from less efficient users. Such trade fully compensates the sellers." While this is a reasonable summary of the efficiency arguments in favor of IFQs, it does not provide a basis for concluding that no individual harvesters are made worse off.

There are at least two ways in which individual harvesters can be made worse off under an IFQ program. First, it is not feasible to ensure that the original distribution of quota among harvesters matches their actual participation in the fishery. For example, a standard procedure is to base quota share allocations on catch history over some historic period. If a participant's harvest was unusually low during all or part of that period he may not receive sufficient quota to leave him as well off as before. Similarly, if the catch history period is not fairly recent, a large

proportion of the quota shares may go to individuals no longer active in the fishery rather than to those currently active (see, for example, North Pacific Fishery Management Council 2002, Appendix 2-7, page 8). Second, the assumption that the price of quota will fully compensate the sellers depends on the implicit assumption that the market for quotas is perfectly competitive, which need not be the case (Anderson 1991).

It should be noted that similar issues could arise in a program involving the allocation of individual processor quotas. The allocation of the quotas might not reflect an individual processor's actual participation in the fishery, for example if a facility was incapacitated during part of the historic period used to determine shares. And fisheries with a small number of processing firms, or a few large and many small firms, are particularly susceptible to market imperfections that might prevent the price of quota from fully compensating the seller.

Thus the Pareto safe concept is not of much practical help in evaluating the effects of fishery rationalization programs at the individual participant level. Matulich and his co-authors in fact rarely refer to applying the Pareto safe concept at this level, but instead focus on Pareto safety at the level of the aggregate harvesting and processing sectors. In particular, as noted above in section 4, they suggest that a rationalization policy is unlikely to be adopted if it would create uncompensated losses for the processing sector.

Matulich, Mittelhammer and Reberte (1996, page 126) speculate that a Pareto safe allocation might be obtained under a "symmetrical rights distribution" and suggest, "Candidates worthy of consideration include (i) a split of harvest quota shares between fishers and processors; (ii) a "two-pie" allocation, in which catching rights are awarded to fishers and processing rights are awarded to processors; and (iii) full-utilization quota shares. . . ."

Matulich and Sever (1999) investigate the properties of the first two of these proposals, referring to the first one as a "one-pie split allocation." They first consider the application of the one-and two-pie allocations to a fishery that is perfectly competitive and conclude that neither type of allocation is capable of providing policy feasible Pareto safe outcomes. They then consider the application of these allocations to a bilateral monopoly. The one-pie allocation is again concluded to not be capable of providing policy feasible Pareto safe outcomes. However, they claim to show that the two-pie system is guaranteed to be Pareto safe not only at the aggregate level but also at the level of individual participants. The validity of this remarkable claim is discussed in the following section.

6. Two-Pie Allocations and Pareto Safety

Matulich and Sever's attempt to demonstrate that a two-pie allocation would be Pareto safe in a bilateral monopoly is based on a series of dubious assumptions. The first is their assumption that the bilateral monopoly would be able to negotiate an ex vessel price that maximized joint profits under conditions of a race for fish, but would be unable to negotiate rationalization measures that would end the race for fish and thereby increase the potential joint profits. No explanation is given for this assumed constraint on the bilateral monopoly's ability to maximize joint profits. Instead it is simply implicitly assumed that the race for fish can be ended only by an externally imposed rationalization program.

In their analysis of the two-pie allocation, efficiency is assumed to be attained through quota trading, and to be independent of the bargained ex vessel price. In particular, they note that the ex vessel price might be outside of the Pareto safe range. However, they argue that the actual price will fall within the Pareto safe range because (page 214):

"While the efficient price does not guarantee Pareto safety, intrinsic bargaining behavior should, provided the bargaining association is responsive to the well being of its entire membership. Bargaining agents have internal incentives to negotiate a price that not only maximizes joint profits (efficiency) but also leaves no member worse off . . . at least one Pareto-safe price exists-the open access ex vessel price, P^0 . . . As long as the parties desire to reach a Pareto-safe agreement, they can do so by settling on a rent share that implies P^0 as the ex vessel price. Thus, there are no functional impediments to achieving an efficient price that is also Pareto safe."

Matulich and Sever then use the Nash (1953) bargaining solution concept to indicate how the rent shares might be determined, given that "the bargaining agents are assumed to act so as to leave no member worse off under ITQs relative to open access" (page 214). The solution of the Nash model does not strengthen the claim that the two pie allocation is Pareto safe, but instead is performed under the assumption that the price must fall within the Pareto safe range.

In short, Matulich and Sever's claim that "[e]ach sector is guaranteed sufficient quasi-rents to make all members Pareto safe" (page 214) is based simply on the assumption that bargaining agents will want and be able to set prices that are Pareto safe for all their members. This assumption is merely asserted, rather than derived from economic theory, and is unlikely to be satisfied in a real-world fishery, in which each side would contain heterogeneous participants. It is not obvious, and Matulich and Sever do not suggest, how such a difficult principal-agent problem in each sector could be structured so that the agent is constrained to leave no member worse off.

Even if it is assumed for the sake of argument that both sides of the bilateral monopoly desire agreements that are Pareto safe as among their own members, a Pareto safe price need not be the outcome of the bilateral monopoly negotiation. This can be demonstrated using a Nash bargaining model with the outside options for both sides correctly specified.

To determine the outside option for the harvester sector of the bilateral monopoly, consider what its alternative would be if it did not reach an agreement with the processor sector. Because it would have IFQs it could harvest the fish, but the processor sector could simply refuse to process the harvest. Therefore the outside option for the harvester sector is zero rent. Similarly, the harvester sector could threaten to not fish, so that the outside option for the processor sector is also zero rent, assuming that it has no processor controlled vessels. With these outside options, there is no reason to assume that the bargaining outcome would be Pareto safe. And if the processor sector also owns some catcher vessels, the outcome could be very unfavorable for harvesters, as shown in Halvorsen, Khalil, and Lawarree (2000).

To summarize, Matulich and Sever's claim that they have shown that a two-pie allocation is guaranteed to be Pareto safe under bilateral monopoly is incorrect, and there is no other market structure for which this claim has even been made. Therefore, no credence should be given to claims that a two-pie system is a "policy-superior initial allocation of rights" (Matulich, Mittelhammer and Reberte 1996, page 112). Instead, the inclusion of IPQs in a fishery rationalization program should be viewed as simply one possible mechanism for enhancing outcomes for processors, bearing in mind that the possible outcomes under IPQs have received very little credible economic analysis and are untested by experience in any real-world fishery.

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Appendix
Major Differences Between AFA Inshore Cooperatives and Council's Crab Rationalization Program

	AFA Inshore Pollock Cooperatives	Proposed BSAI Crab Rationalization
<i>Allocation of processing history:</i>		
Initial allocation	90% of previous year's deliveries Zero	90% of historic share of deliveries 100%
Guaranteed percent		
Individual vessels' ability to reallocate	10% per year, cumulative 80%	Zero
Percent of vessels' approval required to retain		Zero
<i>Regionalization:</i>		
Decreased efficiency gains	No	Yes
Increased processor concentration	No	Yes
<i>Complexity:</i>		
Number of markets	7 cooperatives Maximum of 14	15 regional fisheries Maximum of 75
Number of prices	No	Yes
Need for price arbitration		
Monitoring and enforcement costs	Much less than in IFQ program	Much more than in IFQ program
Large fluctuations in TAC	No	Yes
<i>Total benefits from rationalization:</i>		
Increase in total TAC	Yes	No
Buyback program	No	Yes
Increase in value of product	Large	Moderate
Efficiency benefits from cooperatives		
	Scheduling, avoidance of under harvesting	None if cooperatives do not form
<i>Information base for program evaluation</i>		
Experience in other fisheries	Whiting and offshore pollock cooperatives	IPQs never before used in any fishery
Experience in other markets	Agricultural cooperatives	None
Previous theoretical analysis	Extensive for IFQs and cooperatives	Very little
Previous empirical analysis	Extensive for IFQs and cooperatives	None

STATEMENT OF ROBERT HALVORSEN, PROFESSOR OF ECONOMICS, DEPARTMENT OF
ECONOMICS, UNIVERSITY OF WASHINGTON

ON IMPLICATIONS OF THE AMERICAN FISHERIES ACT FOR BERING SEA/ALEUTIAN
ISLANDS CRAB RATIONALIZATION

On behalf of the City of Kodiak, I am submitting this written testimony to the record of the May 20, 2003 Hearing on Bering Sea/Aleutian Island Crab Rationalization before the Committee on Commerce, Science, and Transportation of the United States Senate. My testimony discusses the rationalization program for the Bering Sea/Aleutian Islands inshore pollock fishery that was implemented under the American Fisheries Act of 1998, and the implications that can be appropriately drawn from this experience regarding the proposed rationalization program for the BSAI crab fisheries.

The City of Kodiak also asked me to submit written testimony on the general issue of whether fishery rationalization programs should include explicit mechanisms to protect processors from possible adverse effects, with specific consideration of Individual Processor Quotas (IPQs) as one such mechanism. My testimony on this topic has been submitted separately and will be referred to below as Halvorsen (2003).

Executive Summary

The American Fisheries Act (AFA) included both a reallocation of total allowable catch from the offshore sector to the inshore sector and a rationalization program for the inshore sector based on cooperatives that were tied to individual processing facilities. In response to controversy over the AFA rules for cooperatives, the North Pacific Fishery Management Council commissioned studies of the effects of the proposed rules as well as of several alternatives (Halvorsen, Khalil and Lawarree, 1999 and 2000).

The studies concluded that the qualification requirements for membership in a cooperative disadvantaged independent catcher vessels. However, the rule that a cooperative could deliver 10 percent of its harvest to an alternative eligible processing facility, and, more importantly, that continued existence of a cooperative required approval by 80 percent of its members, decreased the probability that independent catcher vessel owners would be adversely affected by the AFA provisions for cooperatives. Also, the reallocation aspect of the AFA, as well as the potential efficiency benefits from rationalization of the fishery, would result in large net economic benefits for the inshore fishery as a whole.

The principal alternative to the AFA cooperatives that was considered in the studies was the "Dooley-Hall proposal" under which cooperatives would be allowed to deliver to any eligible processing facility and any eligible catcher vessel would be allowed to join any cooperative. The studies concluded that, for the purpose of evaluating the effects on the distribution of the net benefits of the fishery, the Dooley-Hall proposal could be analyzed as if it were an IFQ program.

Two previous theoretical analyses of the distributional effects of an IFQ program (Plesha and Riley, 1992 and Matulich, Mittelhammer, and Reberte, 1996) had concluded that an IFQ program would have highly adverse effects on processors, and Professor Matulich argued that this would be the result of implementing the Dooley-Hall proposal in the inshore pollock fishery. However, the theoretical analyses had little relevance for the inshore pollock fishery. They assumed cutthroat competition among processors, whereas this was highly unlikely given the degree of concentration and other market structure characteristics. Also, the models assumed that processors received no IFQs but in the pollock fishery processor-controlled vessels would receive at least half of the total harvest allocation. The models also ignored the existence of differentiated capital, informational rents, and alternative uses for capital.

The Halvorsen, Khalil and Lawarree studies included a consideration of the results of the Dooley-Hall proposal under the extreme alternative assumption that the fishery was a bilateral monopoly, with processors behaving as if they were one entity (a monopsony), and a Dooley-Hall cooperative containing all independent catcher vessels acting as a monopoly. It was noted that the bilateral monopoly model was highly unlikely to be an appropriate characterization of the fishery. One reason for considering this model was that it was the market structure for the inshore pollock fishery that Matulich and Sever (1999) had assumed in their study of a "two-pie" allocation. Halvorsen, Khalil and Lawarree concluded that under a bilateral monopoly processors would attain at least three-fourths of the total net benefits of the fishery.

The analysis of the Dooley-Hall proposal under the assumption of either cutthroat competition or bilateral monopoly did not provide a realistic prediction of actual out-

comes in the inshore pollock fishery. Under more realistic assumptions concerning the fishery the most reasonable outcome was that independent catcher vessel owners would fare somewhat better, and processors would fare somewhat worse, under the Dooley-Hall proposal than under the AFA, but this did not imply that a rationalization program based on the Dooley-Hall proposal would have adverse effects on processors.

The Council decided to retain the original AFA provisions for cooperatives in implementing the rationalization program for the inshore pollock fishery. The actual experience of the fishery subsequent to rationalization has been consistent with the overall economic analysis of Halvorsen, Khalil, and Lawarree. Total net economic benefits in the inshore sector were increased because of the increase in the sector's share of the total allowable catch (TAC), as well as substantial increases in the TAC itself. In addition, implementation of the cooperatives has resulted in increased efficiency, including increases in the value of output and decreases in harvesting costs. As a result, the net effects of the AFA on both harvesters and processors is generally agreed to have been positive, although the relative size of the benefits remains a matter of contention.

In its deliberations concerning rationalization of the BSAI crab fisheries, the Council considered the use of a program similar to the AFA cooperatives in the inshore pollock fishery, as well as an entirely different type of rationalization program based on the use of both IFQs for harvesters and individual processing quotas (IPQs) for processors. As in the case of the inshore pollock fishery, the Council commissioned an independent economic analysis of the proposed alternatives. The study, Milon and Hamilton (2002), concluded that a two-pie system in which processors were allocated IPQs for the entire harvest would result in the processors capturing all of the net economic benefits from the fishery.

The study also considered a program with both Class A harvesting quotas that must be delivered to processors that hold IPQs, and Class B harvesting quotas that may be delivered to any processor. As the ratio of B to A quotas increases, harvesters fare better. If all harvesting quotas are Class B, the outcome is the same as for an IFQ only program, with the likelihood that both harvesters and processors would benefit from rationalization.

The Milon and Hamilton study also considers the effects of regionalization of the fisheries. It concludes that regionalization reduces cost efficiency by imposing constraints that prevent harvest within a region being transferable to other regions. In addition, regionalization increases the market power of processors, resulting in lower ex vessel prices.

Milon and Hamilton's conclusion that both harvesters and processors are able to gain under an IFQ program that did not include IPQs is consistent with Halvorsen, Khalil, and Lawarree's analysis of the Dooley-Hall proposal under the AFA. As in other individual harvesting quota programs, the implementation of an IFQ program in the BSAI crab fisheries would allow the creation of rents and facilitate rationalization in both the harvesting and processing sectors. The realization of significant economic benefits from rationalization of the fisheries would make it possible for both processors and harvesters to benefit, and both the Halvorsen, Khalil and Lawarree study and the Milon and Hamilton study indicate that this is the most likely outcome. The research program by Professor Matulich that has attempted to establish the presumption that harvesters would gain and processors would lose under an IFQ program is simply not credible, either on theoretical or empirical grounds.

The "three-pie voluntary cooperative program" proposed by the Council for the BSAI crab fisheries includes both regionalization and the requirement that 90 percent of total harvesting quotas be Class A shares that can only be delivered to processors holding IPQs. Class B shares, which can be delivered to processors that do not hold IPQs, account for 10 percent of the harvest allocation. As opposed to the likely outcome under a standard IFQ program that both processors and harvesters would benefit, the Milon and Hamilton study concludes that a program in which processors receive IPQs equal to the total harvest would benefit only processors, with the value of harvester IFQs being driven to zero. They also conclude that as the ratio of IPQs to IFQs decreases, harvesters will fare better. However, there is no reason to believe that reducing the IPQ share from 100 percent to 90 percent is sufficient to allow independent catcher vessels to avoid adverse effects from the rationalization program.

The basis for the Council's conclusion that a 90 percent-10 percent program would balance the interests of both processors and harvesters is not clear. Some proponents of the IPQ program have based their arguments in its favor on an analogy with the AFA inshore pollock cooperatives. It is now generally agreed that outcomes under the AFA cooperatives benefited both processors and harvesters. However, the

90 percent-10 percent IPQ program is fundamentally different from the AFA. The only apparent similarity is that a cooperative can deliver 10 percent of its harvest to an eligible processing facility other than the one it is qualified for under the AFA, and harvesters could deliver 10 percent of their harvests to processors without IPQs under the proposed program for the BSAI crab fisheries. However this apparent similarity is purely superficial and does not imply, as some proponents have argued, that processors are guaranteed 90 percent of their historic processing shares under the AFA program as well as under the three-pie program.

There is in fact no basis for believing that the rationalization program proposed for the BSAI crab fisheries will have similar outcomes to those obtained under the AFA cooperatives for the inshore pollock fishery. Instead, the crab rationalization program as currently structured is much more advantageous for processors both because of the guarantee of 90 percent of their processing history and because of the regionalization restrictions. The program is also far more complex, making it problematic that market processes can be relied on for the determination of appropriate prices. And there is less of a margin for error in case of unintended distributional effects because the net benefits to the fishery as a whole are expected to be substantially smaller. Some of the major differences between the two programs are summarized in the Appendix.

The generally favorable outcomes under the AFA provide no assurance of favorable outcomes under the proposed rationalization program for the BSAI crab fisheries. The 90 percent-10 percent proposal appears to be a step in the direction of a compromise that less overwhelmingly favors processors than a 100 percent IPQ program would. However, it is not clear why the 100 percent program should have been the apparent starting point.

A more obvious approach would be to begin by considering the effects of a standard IFQ program. Both the Halvorsen, Khalil and Lawarree study and the Milon and Hamilton study indicate that a straight IFQ program would benefit both harvesters and processors. Given the existence of concerns that an IFQ program might instead result in adverse outcomes for processors, consideration of modifications to the program to rebalance the outcomes would be reasonable. Regionalization is one such modification, and whatever its primary purpose, one effect of regionalization in the BSAI crab rationalization program is to increase processors' bargaining power.

The allocation of IPQs would be another possible modification. Restricting deliveries of some portion of the harvest under IFQs to processors holding IPQs would tilt the distribution of the benefits of the program in favor of processors, with processors faring better the larger the share of IPQs in the total harvest. Given that it is not clear that processors would fare badly without IPQs, as well as the total lack of practical experience with IPQs, it would be reasonable to limit the original allocation of IPQs to a modest share of the total harvest. And if the goal is to have an effect similar to the overall provisions of the AFA inshore cooperatives, which allow for the possibility that a processor's claim on its processing share can be eroded over time or even be completely lost, then this share should most likely be less than 50 percent.

The Council has commendably committed itself to closely monitoring the outcomes under the BSAI crab rationalization program and making modifications to the program if the outcomes are judged to be unsatisfactory. Therefore, if it turned out that the initial allocation of IPQs was seen to be causing unsatisfactory results, the Council could modify the allocation accordingly. Because IPQs do not contribute to the realization of the efficiency benefits of rationalization, such changes would have primarily only distributional results. Such a flexible approach would appear to be clearly superior to one in which the Council commits itself to a 90 percent-10 percent program with the intention of making unspecified modifications to other aspects of the program if the outcomes are considered unsatisfactory.

American Fisheries Act

The AFA increased total net economic benefits in the inshore sector of the BSAI pollock fishery in two major ways; it increased the inshore sector's share of the total allowable catch from 35 percent to 50 percent, and it made rationalization of the fishery possible through the formation of harvesting cooperatives. Each cooperative was to be allocated a share of the inshore sector's TAC based on the catch history of the vessels belonging to the cooperative. Therefore, the AFA made it possible for catcher vessels that joined a cooperative to obtain pollock harvest allocations despite the moratorium on new IFQ programs. Because inshore processors had expressed concern that this might put them at a bargaining disadvantage, the AFA required that each cooperative be tied to a specific processing facility.

AFA cooperatives

Under the AFA cooperative provisions, qualification for membership in a cooperative is based on the facility to which a catcher vessel delivered the largest share of its total catch in the previous year. If a catcher vessel does not join a cooperative it can fish for the share of the total inshore allocation not apportioned to the cooperatives. The term "open access fishery" is used to refer to this part of the inshore pollock fishery, with the understanding that access of catcher vessels and processing facilities is limited by the AFA. A catcher vessel fishing in open access can choose to remain in open access and deliver its fish to the eligible processing facility, or facilities, offering the best price. Alternatively, it can choose in any year to join the cooperative associated with the processing facility to which it delivered the largest share of its fish in the previous year.

During the Council's deliberations concerning the implementation of the AFA, an association of independent catcher vessel owners protested to the Council that the AFA rules for inshore cooperatives would be harmful to them because of the restrictions on where they could market their fish. The association proposed an alternative set of rules, which became known as the Dooley-Hall proposal. The most important proposed change was to eliminate the qualification requirements so that a cooperative could deliver to any eligible processing facility and any eligible catcher vessel could join any cooperative.

In response, the Council commissioned a study by myself and two University of Washington colleagues to help determine if the implementation of the inshore sector cooperatives as provided for in the AFA would have beneficial or adverse effects on independent vessel owners and to evaluate the effects of alternative proposals (Halvorsen, Khalil and Lawarree, 1999). Subsequently, the Council commissioned a second study that included the evaluation of an expanded set of alternative proposals (Halvorsen, Khalil and Lawarree, 2000). The studies were extensive and included interviews with many participants in the pollock fishery as well as theoretical and empirical economic analysis.

The interviews with participants were consistent with respect to two issues; that the AFA provisions for cooperatives were designed to avoid any possible adverse effects of rationalization on processors, and that processors would fare worse, and independent catcher vessels would fare better, under the Dooley-Hall proposal than under the AFA cooperatives. However, there was sharp disagreement concerning the magnitude of the distributional effects. We had representatives of processors tell us that both sides would gain under the AFA rules, whereas the processors would lose disastrously under the Dooley-Hall proposal, while representatives of independent catcher vessel owners said that both sides would gain under the Dooley-Hall proposal, whereas they would lose disastrously under the AFA rules.

In addition, one academic economist, Professor Scott C. Matulich, whose research was funded by some of the processors, claimed in public testimony at the October 1999 Council Meeting that his research proved that everyone would gain under the AFA cooperative provisions whereas processors would lose disastrously under the Dooley-Hall proposals. [The research upon which Professor Matulich based these conclusions is critically reviewed in the written testimony that I submitted on May 20, 2003 (Halvorsen 2003)]. He subsequently amended his position and testified at the June 2000 Council meeting that the AFA had introduced a new market failure that "encourages vertically integrated processors to impose higher average raw fish costs on non-integrated or less integrated processors" which could drive them out of business, even if the non-integrated processors were more efficient. Furthermore, the AFA "may be the death knell of the independent fisherman" because all processors would want to become vertically integrated (Matulich 2000, page 15).

Our studies reached much more moderate conclusions than were expressed either in the participant interviews or Professor Matulich's testimony. We concluded that the balance of bargaining power in the fishery under the AFA provisions for cooperatives favored processors, because the apparent necessity of spending a year in open access in order to change processing facilities could be very costly for a catcher vessel. Therefore there was a significant probability that independent catcher vessels would be adversely affected by the AFA's provisions for cooperatives. However, we also noted that the positive net benefits from the reallocation aspect of the AFA, as well as the potential net economic benefits from rationalization of the fishery, decreased the likelihood that catcher vessels would be adversely affected relative to the situation pre-AFA.

We also concluded that two other provisions of the AFA would decrease the probability that independent catcher vessel owners would be adversely affected. One was the rule that the cooperative contract could provide for up to 10 percent of a cooperative's harvest to be processed by a different processing facility. In our study we noted that cooperatives were expected to be able to negotiate a higher price for

the 10 percent of their deliveries that could be delivered to any eligible processing facility. However, it turned out that there was a more important way in which the 10 percent rule improved an independent catcher vessel's bargaining power, which we did not recognize at the time of our study.

The principal reason for expecting that independent catcher vessels might be adversely affected by the AFA provisions for cooperatives was that the apparent necessity of spending a year in open access in order to change processing facilities could be very costly. What we did not anticipate was that, by utilizing the 10 percent of the cooperative's harvest that could be delivered to another eligible processing facility, catcher vessels have been able to qualify for a new cooperative without having to spend a year in open access. This has been possible because the 10 percent applies to the cooperative's collective deliveries, not to each individual vessel's deliveries. Therefore the 10 percent rule freed up enough fish to make it feasible for even a large vessel to deliver more of its harvest to a new processing facility than to its existing facility and therefore to be able to switch processors without incurring the cost of going through open access.

This has improved the bargaining power of independent catcher vessels more than we expected, because if they are not satisfied with the outcome of price negotiations they can credibly threaten to switch processors in the following year. If switching did occur, a processing facility's claim on its cooperative's original total harvest could decrease cumulatively over time at a rate of up to 10 percent per year, so that by the end of the original five year life of the AFA it might have lost more than 40 percent of its original processing share. And the process of erosion could continue into subsequent years if, as happened, the life of the AFA was extended. From the point of view of the affected processing facility, the experience in the first five years would be the equivalent in the proposed BSAI crab rationalization plan to having its individual processing quota decrease from 90 percent of its processing history to less than 50 percent.

The other provision that was favorable for independent catcher vessels was the rule that a cooperative had to be approved by 80 percent of the catching vessels qualified for it. This rule was even more important for the bargaining power of independent catcher vessels than the 10 percent rule, because it involved the possibility of a processing facility losing its entire claim on its cooperative's original total harvest. The rule made it possible for independent catcher vessels to credibly threaten to dissolve their cooperative by voting against its continued existence. This would not only deprive the processor of any claim on the deliveries of the independent catcher vessels, it would also cause the processor to lose the catch allocations of any catcher vessels that it owned, because catch allocations could only be obtained through membership in a cooperative.

The 80 percent rule makes the continued existence of a cooperative from year to year quite uncertain. As a result, the National Marine Fisheries service required that each in shore cooperative apply for its allocation on an annual basis. Each cooperative must apply for its allocation annually and must certify annually that the cooperative meets all the requirements in the AFA and its associated regulations. If it is not able to do so, the processing facility will lose its entire claim on its processing share.

Dooley-Hall cooperatives

The Dooley-Hall proposal would have modified or eliminated several of the AFA rules for inshore cooperatives. The most important proposed change was to eliminate the qualification requirements, so that cooperatives would not be tied to specific processing facilities. Instead, under the Dooley-Hall proposal a cooperative could deliver to any eligible processing facility, and any eligible catcher vessel could join any cooperative. Elimination of the qualification requirements would make the 80 percent rule inoperable, and it would be replaced by a rule requiring that the cooperative contract be signed by the owners of five or more catcher vessels.

Except for the requirement that catcher vessels would have to belong to a cooperative in order to obtain the advantages of pollock harvest allocations, the Dooley Hall proposal would be essentially equivalent to an IFQ program. The cooperative requirement had some important practical implications for the management of the fishery, for example, with respect to monitoring and enforcement issues. However, for the purpose of evaluating the principal effects of the Dooley-Hall alternative on the different types of participants in the fishery, it could be analyzed as if it were an IFQ program. This also implies that our analysis of the Dooley-Hall proposal is relevant for the analysis of implementing an IFQ program in a fishery with similar characteristics to the inshore pollock fishery.

At the time of our analysis, there already existed a considerable amount of theoretical and empirical information on fishery management programs involving IFQs,

including the National Research Council (1999) study mandated by the Sustainable Fisheries Act of 1996. A consistent finding in these studies was that IFQ programs score highly on efficiency grounds, allowing the creation of rents and facilitating rationalization in both the harvesting and processing sectors. However, some of the studies also note that implementation of these programs could result in adverse effects on some participants in the fishery, and that the distributional effects of IFQ programs have been controversial.

As noted above, the principal controversy with respect to the AFA and Dooley Hall proposals was their effects on the relative well-being of processors and harvesters. Our analysis showed that the degree of competitive behavior among processors would be the most critical factor in determining outcomes under the Dooley-Hall proposal. Processors had a number of important bargaining advantages. Their ownership of catching vessels reduced their reliance on supply from independent catcher vessels, while also providing them an informational advantage given that independent catcher vessels did not own inshore processing plants. Independent catcher vessels did have the advantage of being able to legally bargain as a group through the Bering Sea Marketing Association (BSMA), but the BSMA did not represent all of the catcher vessels and the largest processor was not a party to the negotiations.

The basic change that the AFA made in the economic circumstances of the fishery was that catcher vessels would have a claim on the available harvest allocation based on their catch history. Historically, the lack of such a claim had been the primary incentive for the race to fish, and therefore the AFA was expected to decrease the daily rate of harvest and thereby extend harvesting periods. This in turn would create a large amount of extra capacity in both the harvesting and processing sectors, which might affect the degree of competitive behavior among processors.

However, the processing sector was very concentrated, entry was legally blocked by the AFA, and processors should anticipate that aggressive tactics that gave them short term gains would not be profitable in the long run because they can all engage in such tactics. We did not believe that even the large amount of excess capacity that was anticipated would make the processors blind to the benefits of moderate competition. Their investments in capacity were sunk costs and cutthroat competition would not make them profitable. Therefore, it was highly improbable that the situation would deteriorate, from the processors' point of view, into one of cutthroat competition. However, because this was not a logical impossibility, the outcomes that would be produced by Dooley-Hall proposal under cutthroat competition were examined.

This case had previously been considered in the context of a race for fish that is ended by the introduction of IFQs, first in a theoretical analysis conducted by two employees of Trident Seafood (Plesha and Riley, 1992), and subsequently in a paper by Matulich, Mittelhammer, and Reberte (1996). The latter paper was the basis for Professor Matulich's Council testimony concerning the effects of the Dooley-Hall proposal. The paper concluded that if processing capital had no alternative uses or salvage value, then the excess capacity created by an IFQ program would cause the ex vessel price of fish to increase to the point where it was equal to the difference between final product price and short-run average variable processing cost. Processors would leave the industry until excess capacity no longer existed. During the transitional period, catcher vessels not only would gain all the rents from the fish, but also the "quasi-rents" from the processors' capital. Processors that survived would realize gains in efficiency and market shares, but might have to pay a higher ex vessel price for fish.

However, this theoretical analysis had little relevance for the inshore pollock fishery. First, it was extremely unlikely that processors in such a highly concentrated fishery would not be able to do better than the perfectly competitive market outcomes. Second, the model assumes that processors receive no IFQs, but in the pollock fishery processors owned catcher vessels that were being given harvest allocations on the same terms as the independent catcher vessels. Data provided by the National Marine Fisheries Service indicated that processor-controlled vessels would receive at least half of the total harvest allocation. Therefore, for at least half the total allocation, any increase in price paid by processors would, except for the effect on crew share, be merely an internal transfer, not an economic loss. Third, the model assumes that there is only one basic type of processing capital, so that excess aggregate capacity implies that all capital is in excess supply. However, pollock processors produce two main types of primary product, surimi and fillets. Under then current market conditions, fillet capital would not be in excess supply even with a large amount of total excess capacity, and therefore would continue to earn quasi-rents. The model's assumptions that processors could not earn informational

rents, and that pollock processing capital had no alternative uses, were also too pessimistic.

The extreme alternative to cutthroat competition among processors is that they act as a monopsony. Monopsony implies that the processors fully account for their mutual interdependence and behave as if they were one entity. If independent catcher vessels also were able to unite, as could occur under the Dooley-Hall proposal by the formation of a single cooperative containing all independent catcher vessels, the monopsony case would become equivalent to that of a bilateral monopoly. This is the market structure that Matulich and Sever (1999) assumed for the inshore pollock fishery in their paper claiming that a two-pie allocation would make everyone better off. As discussed in Halvorsen (2003), this was a highly misleading characterization of the actual fishery. However, because such an outcome was not a logical impossibility under the Dooley Hall proposal, the outcomes that would be produced by the Dooley-Hall proposal under bilateral monopoly were also examined.

In this scenario, the independent catcher vessels' cooperative would give them an exclusive right to approximately half of the total inshore allocation. If they could not negotiate an agreement with the processors, they would not fish. Similarly, the most severe threat of the processors would be to not process the fish. In both of these cases, the processors and the independent catcher vessels would receive nothing from the independent catcher vessels' share of the allowable harvest. The standard game theory outcome, known as the Nash bargaining solution, would be for them to split the benefits from the independent catcher vessels' fish equally. The processors would also obtain all of the rent from the half of the total allocation that they controlled. The end result would be that processors would obtain about three-fourths of the total net benefits from the fishery (one-half from the processor-controlled vessels and one-fourth from the independent catcher vessels). Thus the assumption that the inshore pollock fishery is a bilateral monopoly is inconsistent with a conclusion that the Dooley-Hall proposal would have had seriously adverse results for processors.

The analysis of the Dooley-Hall proposal under the assumptions of cutthroat competition and bilateral monopoly is instructive, but would provide a realistic prediction of actual outcomes only in a fishery that fit one of these extreme cases. For the inshore pollock fishery, the most probable outcome was that processors would be moderately competitive. Analysis of the outcomes in this case was necessarily more speculative, because it could not rely on the results of the standard simple models of cutthroat competition and bilateral monopoly. However, the same key trade-offs would be at work. Independent catcher vessels' would benefit under the Dooley-Hall proposal from the elimination of the costs of open access and from the ability to form cooperatives independent of the processing facilities, but would lose the bargaining leverage provided by the 80 percent rule. We concluded that the most reasonable outcome was that independent catcher vessels would have been somewhat better off, and processors somewhat worse off, under the Dooley-Hall proposal than under the AFA rules. This did not imply that processors were expected to be harmed by a rationalization program based on the Dooley-Hall proposal, only that they would not be as well off as under the AFA provisions for cooperatives.

Outcomes under the AFA

The analysis of the potential effects on harvesters and processors of rationalization programs under the AFA was facilitated by the existence of previous economic analysis of, and practical experience with, its principal features. For example, there is a large body of relevant literature on agricultural cooperatives that was surveyed in an appendix to the Halvorsen, Khalil, and Lawarree studies written by Professor Steven T. Buccola of Oregon State University. In addition, the rationalization benefits attainable by fish harvesting cooperatives had been demonstrated by the Pacific whiting cooperative established in 1997 and the AFA cooperatives in the offshore sector that were implemented in 1999. Similarly, the analysis of probable outcomes under the Dooley-Hall proposal could draw on the existing literature on IFQ programs.

The rationalization program that was implemented in the inshore pollock fishery retained the original AFA provisions for cooperatives. The actual experience of the fishery subsequent to rationalization has been consistent with the overall economic analysis of Halvorsen, Khalil, and Lawarree. Total net economic benefits in the inshore sector have been increased as a result of the increase in the sector's share of the TAC, as well as substantial increases in the TAC itself. In addition, implementation of the cooperatives has resulted in increased efficiency. Improved targeting of pollock during the peak roe season has contributed to greatly increased ex vessel prices during this season. The value of output has also increased because slowing the race for fish permitted an increase in the recovery rate and a shift to

higher valued products. Harvesting costs have been reduced by the transfer of quota shares from less efficient vessels to more efficient vessels, and easy transferability of allocation within a cooperative has facilitated the full harvesting of the available allocations. As a result, the net effects of the AFA on both harvesters and processors is generally agreed to have been positive, although the relative size of the benefits remains a matter of contention.

On the other hand, the fishery has not demonstrated the outcomes suggested by Professor Matulich. There has been no apparent tendency for vertically-integrated processors to have gained at the expense of less-integrated processors, much less to have been able to drive them out of business. And the AFA does not appear to have had significant negative effects on the share of independent catcher vessels in the fishery, much less to have been the “death knell of the independent fisherman.”

Because the Dooley-Hall proposal was not adopted by the Council, it is not possible to compare actual outcomes with the conclusions concerning the probable outcomes that were reached by Halvorsen, Khalil, and Lawarree. (Three studies of the economic effects of IFQ programs in halibut fisheries are discussed in the written testimony I submitted on May 20, 2003). However, the analysis sheds light on the possible outcomes of IFQ programs in fisheries with similar characteristics to the inshore pollock fishery. In particular, it indicates that implementation of an IFQ program in a fishery with a similar market structure would be highly unlikely to have the adverse effects for processors that are implied by Matulich, Mittelhammer, and Reberte’s (1996) analysis.

BSAI Crab Rationalization Plan

In its deliberations concerning rationalization of the BSAI crab fisheries, the Council considered the use of a program similar to the AFA cooperatives in the inshore pollock fishery, as well as an entirely different type of rationalization program based on the use of both IFQs for harvesters and individual processing quotas (IPQs) for processors. As in the case of the inshore pollock fishery, the Council commissioned an independent economic analysis of the proposed alternatives.

Milon and Hamilton study

The study, Milon and Hamilton (2002), draws conclusions for economic performance under the assumptions that the harvesting sector is perfectly competitive and the processing sector contains few enough firms that it might be able to exercise market power. One of the rationalization programs analyzed is a two-pie system in which processors are allocated IPQs for the entire harvest. Milon and Hamilton conclude that each processor would maximize profits by paying the lowest ex vessel price that is required to support harvester delivery. The result would be that processors capture all of the net economic benefits from the fishery. The allocation of IFQs in such a program would be redundant, and the value of harvester IFQs would be driven to zero.

They also consider a program with both Class A harvesting quotas that must be delivered to processors that hold IPQs, and Class B harvesting quotas that may be delivered to any processor. If all harvesting quotas are Class B, the outcome is the same as for an IFQ only program, with the likelihood that both harvesters and processors would benefit from rationalization. As the ratio of A to B quotas increase, processors are expected to fare better, and harvesters to fare worse. And when all the quotas are Class A, processors capture all of the net economic benefits from the fishery.

The study also considers the effects of regionalization of the fisheries. It concludes that regionalization reduces cost efficiency by imposing constraints that prevent harvest within a region being transferable to other regions. In addition, regionalization increases the market power of processors, resulting in lower ex vessel prices.

Milon and Hamilton’s assumption that the harvesting sector is perfectly competitive is not completely accurate, because catcher vessels have negotiated prices collectively through the Alaska Marketing Association, and have engaged in strikes. However, the effectiveness of strikes has been undermined because catcher processors have continued to fish during them. Also, the lengthening of fishing seasons under rationalization is expected to decrease the effectiveness of collective bargaining (North Pacific Fishery Management Council, 2002, page 376). Therefore, the assumption that the harvesting sector is competitive does not invalidate their conclusions concerning the qualitative effects of IPQs and regionalization.

Implications of the AFA study for an IFQ program

Milon and Hamilton’s conclusion that both harvesters and processors are able to gain under an IFQ program that did not include IPQs is consistent with Halvorsen, Khalil, and Lawarree’s analysis of the Dooley-Hall proposal under the AFA. As noted above, the Dooley-Hall proposal was essentially equivalent to an IFQ pro-

gram, and therefore the principal factors that affected outcomes under it would also affect outcomes under an IFQ. Because some of the most important of those factors are also present in the BSAI crab fisheries, our analysis of the Dooley-Hall proposal can shed light on the economic effects of implementing an IFQ program in the crab fisheries.

The market structure of the BSAI crab fisheries is similar to that of the inshore pollock fishery in several important respects. Most importantly, the processing sector is highly concentrated, especially on a regional basis. Processors can be expected to realize that aggressive tactics yielding short-term gains are unlikely to be profitable in the long run. Entry is not prohibited but there would be some barriers to entry, even if existing processors were not given any rights to their processing history. Processors own catching vessels, which reduces their reliance on supply from independent catcher vessels and also provides them an informational advantage. Independent catcher vessels do have the advantage of being legally able to bargain as a group, but the effectiveness of collective bargaining is expected to decrease under rationalization.

Implementation of an IFQ program would give catcher vessels a claim on the available harvest allocation based on their catch history. This would eliminate the primary incentive for the race to fish, and therefore can be expected to result in longer harvesting periods. This in turn would create extra capacity in both the harvesting and processing sectors, which might affect the degree of competitive behavior among processors.

However, because the processing sector is very concentrated and there are barriers to entry, the situation should be similar to that analyzed in the AFA study. Processors should anticipate that aggressive tactics that gave them short-term gains would not be profitable in the long run because they can all engage in such tactics. Not even a large amount of excess capacity would make the processors blind to the benefits of moderate competition. Their investments in capacity are sunk costs and cutthroat competition would not make them profitable. Therefore, it is highly improbable that the introduction of IFQs would result in cutthroat competition on the part of processors.

Therefore, as in the inshore pollock fishery, the cutthroat competition among processors that is required for an IFQ program to lead to the adverse results for processors predicted by Matulich, Mittelhammer, and Reberte (1996) is highly unlikely. During the Council's deliberations on the BSAI crab rationalization, Professor Matulich attempted to buttress his theoretical arguments for the adverse effects of IFQs by citing an empirical study of the halibut and sablefish IFQ program (Matulich and Clark, 2002). The theoretical and empirical problems with this study were discussed in my previous written testimony to this Committee (Halvorsen 2003), which also summarizes the problems that the United States General Accounting Office (2002) noted concerning the study's methodology and scope.

The extreme alternative to cutthroat competition among processors is that they act as a monopsony. A pure monopsony would capture all of the net benefits in the fishery. A less extreme case is one in which the independent catcher vessels are also able to unite effectively under an organization such as the Alaska Marketing Association. With independent catcher vessels, as well as processors, united, the analysis becomes one of bilateral monopoly for the entire industry. The situation is equivalent to there being only one processing firm, which also owns some catcher vessels, and one entity that owns all the independent catcher vessels.

The first step in the analysis is to understand the outside options (threat points) of the two players. Since there would be effectively only one processor, the independent catcher vessel owner's only threat would be to refuse to fish. The threat of the processor would be to refuse to process the fish of the independent catcher vessel owner. If the independent catcher vessel did not fish, its net benefit would be zero, whereas if the processor refused to process fish from the independent catcher vessels, it would still have available to it the fish caught by its own catcher vessels. Therefore, the Nash bargaining solution would imply a distribution of net benefits in which the processor would obtain more than half of the total net economic benefit of the fishery.

The assumptions of cutthroat competition, monopsony, or bilateral monopoly are not plausible characterizations of market structure in the BSAI crab fisheries under a standard IFQ program. The most probable outcome would be that processors would be moderately competitive. They would have a bargaining advantage in that their ownership of catching vessels reduces their reliance on supply from independent catcher vessels, while also providing them an informational advantage. Regionalization of the crab fisheries would increase their bargaining power by increasing the effective degree of concentration. Independent catcher vessels would have the advantage of being able to legally bargain as a group, but the effectiveness of

collective action is expected to decrease because of elongation of the fishing seasons. The balance of bargaining power would be expected to be in favor of processors, but not overwhelmingly so.

As in other individual harvesting quota programs, the implementation of an IFQ program in the BSAI crab fisheries would allow the creation of rents and facilitate rationalization in both the harvesting and processing sectors. The realization of significant economic benefits from rationalization of the fisheries would make it possible for both processors and harvesters to benefit, and both the Halvorsen, Khalil and Lawarree study and the Milon and Hamilton study indicate that this is the most likely outcome. The research program by Professor Matulich that has attempted to establish the presumption that harvesters would gain and processors would lose under an IFQ program is simply not credible, either on theoretical or empirical grounds.

The Council's "three-pie" proposal

The "three-pie voluntary cooperative program" proposed by the Council for the BSAI crab fisheries includes both regionalization and the requirement that 90 percent of total harvesting quotas be Class A shares that can only be delivered to processors holding IPQs. Class B shares, which can be delivered to processors that do not hold IPQs, account for 10 percent of the harvest allocation. As opposed to the likely outcome under a standard IFQ program that both processors and harvesters would benefit, the Milon and Hamilton study concludes that a program in which processors receive IPQs equal to the total harvest would benefit only processors, with the value of harvester IFQs being driven to zero. They also conclude that as the ratio of IPQs to IFQs decreases, harvesters will fare better. However, there is no reason to believe that reducing the IPQ share from 100 percent to 90 percent is sufficient to allow independent catcher vessels to avoid adverse effects from the rationalization program.

The basis for the Council's conclusion that a 90 percent-10 percent program would balance the interests of both processors and harvesters is not clear. Some proponents of the IPQ program have based their arguments in its favor on an analogy with the AFA inshore pollock cooperatives. It is now generally agreed that outcomes under the AFA cooperatives benefited both processors and harvesters. However, the 90 percent-10 percent IPQ program is fundamentally different from the AFA. The only apparent similarity is that a cooperative can deliver 10 percent of its harvest to an eligible processing facility other than the one it is qualified for under the AFA, and harvesters could deliver 10 percent of their harvests to processors without IPQs under the proposed program for the BSAI crab fisheries.

However this apparent similarity is purely superficial. Under the three-pie program processing companies are guaranteed 90 percent of their historic processing shares, whereas under the AFA program a processing facility is not guaranteed to retain any of its claim on its cooperative's original total harvest. In addition, other differences between the AFA and the proposed crab rationalization program contradict the supposed analogy. The following section summarizes some of the major differences between the two programs.

Differences between the AFA and Crab Rationalization Programs

Protection of processors' market shares

Under the proposed rationalization program for the crab fisheries, a processor would receive processor quota share equal to 90 percent of its historic processing share. This amount would be guaranteed to the processor because harvesters could deliver their Class A allocation only to processors holding processing share. Therefore the only way that a processor could lose more than 10 percent of its historic market share would be if it set the ex vessel price so low that vessels would prefer to forego fishing rather than deliver fish to it, because that would be their only alternative.

Under the AFA, each processing facility has the right to process 90 percent of its cooperative's total harvest, but this does not guarantee that it will receive 90 percent of its historic processing share, because vessels have alternatives to remaining in the cooperative. One alternative for a vessel is to fish in the open access portion of the fishery and deliver its fish to another eligible processing facility. It could then either remain in open access or join the cooperative of the new processing facility. Another option is to qualify for another cooperative without going through open access by delivering its fish to the alternative processing facility as part of the 10 percent of the cooperative's total harvest that can be delivered to any eligible facility. And the existence of a cooperative requires the approval of at least 80 percent of the vessels qualified for it. As a result, a processing facility is faced with the possi-

bility of losing all of its processing rights if more than 20 percent of the vessels in the cooperative decide that it should be dissolved.

Therefore protection of processors' market shares would be much greater under the proposed program for the crab fisheries than under the AFA, thereby giving the processors much greater bargaining power. In particular, under the AFA a processor will retain market share only if it offers an ex vessel price that is competitive with the price being offered by other processors, whereas under the proposed crab rationalization program a processor could retain 90 percent of its market share even if it offered a price so low that the catcher vessel was barely able to cover the average variable costs of harvesting the fish.

Regionalization

Under the proposed rationalization program for the crab fisheries, Class A harvest shares and processor shares for each crab fishery would be regionally designated, whereas under the AFA the entire inshore sector is treated as a single region. This difference has important implications both for the net economic benefits that can be realized from rationalization and for the distributional consequences of rationalization.

The Council itself recognizes that regionalization reduces net economic benefits by restricting consolidation of activities that are desirable for reducing capacity and gaining efficiency in both the harvesting and processing sectors under rationalization (Report to Congress, August 2002, page 18). The lack of such constraints under the AFA increased the total net economic benefits that were available to be shared by harvesters and processors.

Regionalization also has implications for the distributional consequences of rationalization because it subdivides the markets for crab and thereby increases the already high degree of concentration among processors. It also creates an incentive for processors to consolidate their market shares on a regional basis, which would increase the degree of concentration still more. The greater bargaining power attained by processors can be expected to adversely affect the price received by harvesters for Class B allocations as well as for Class A allocations, both because it might be difficult logistically to deliver to different markets and because processors might be able to require bundling deliveries of the two classes of fish.

Complexity

The "three-pie voluntary cooperative program" being recommended for the crab fisheries is much more complex than the rationalization program implemented under the AFA. The greater complexity can be expected to have serious negative consequences both with respect to the cost of management and with respect to the functioning of the market for fish and for quota shares.

Implementation of the proposed rationalization program for the crab fisheries would require the determination of share allocations in each region of each fishery for each individual vessel and processor. Ongoing management measures would include annual monitoring and enforcement measures at the same level of detail. Eventual formation of voluntary cooperatives might reduce some of the management costs with respect to harvesting, but the extra costs of managing processing activities would continue.

More importantly, the increased complexity of the system might make the determination of prices through a decentralized market structure impracticable. For each regional market in each fishery the prices that would have to be determined include the ex vessel price of Class A fish, the ex vessel price of Class B fish, the price of Class A harvesting quota, the price of Class B harvesting quota, and the price of processing quota.

Attaining equilibrium prices in such a complex system would be difficult even in large, well-functioning, markets, and the markets in the crab fisheries would be both thin and imperfectly competitive. In addition, the large fluctuations in total allowable catch would complicate the determination of equilibrium prices and hinder the ability of the system to converge to stable values. In recognition of the possibility of the price system breaking down, the rationalization plan includes a binding arbitration program. However, the necessity of such a procedure increases the cost of managing the fisheries under the proposed rationalization plan, and even if the arbitration procedure were well designed, it would not be an adequate substitute for a well-functioning market.

Net benefits from rationalization

Rationalization of the pollock fishery under the AFA created large net economic benefits for the inshore sector, which facilitated outcomes benefiting both the harvesting and processing sectors. As already noted, the regionalization requirement under the proposed plan for the crab fisheries would decrease the potential net eco-

conomic benefits to be obtained by rationalization. But even if this provision did not exist, the total net economic benefits of rationalization in the crab fisheries could not be expected to be as large as they were under the AFA, because participants in the inshore pollock fishery benefited both from a large increase in the sector's total allocation and from large rationalization benefits from the formation of co-operatives.

The sector's total allocation was increased first by an increase in its share of the total directed pollock fishery from 35 percent to 50 percent, and subsequently by an increase in the total allowable catch for the pollock fishery. The combined result was that the inshore sector's total allocation has increased by 80 percent from the pre-AFA level in 1998 to the present.

Large efficiency benefits were realized from the formation of the AFA cooperatives. Rationalization under the AFA permitted improved targeting of pollock during the peak roe season, resulting in greatly increased ex vessel prices during this season. The value of output was also increased because slowing the race for fish permitted an increase in the recovery rate and a shift to higher valued products. Harvesting costs have been reduced by the transfer of quota shares from less efficient vessels to more efficient vessels, and easy transferability of allocation within a cooperative has facilitated the full harvesting of the available allocations.

In contrast, the proposed rationalization program for the crab fisheries does not include an increase in the total allocations available to these fisheries. It does incorporate a buyback program, but the efficacy of the buyback program has yet to be determined, and in any case could not result in benefits equivalent to the 80 percent increase in total allocation experienced by the inshore pollock fishery. Similarly, increases in the value of output due to rationalization are not anticipated to be as large for the crab fisheries, and increases in harvesting efficiency are likely to be hindered by the restrictions imposed by the proposed program.

Implications

There is no basis for believing that the rationalization program proposed for the BSAI crab fisheries will have similar outcomes to those obtained under the AFA cooperatives for the inshore pollock fishery. Instead, the crab rationalization program as currently structured is much more advantageous for processors both because of the guarantee of 90 percent of each processing company's processing history and because of regionalization. The program is also far more complex, making it problematic whether market processes can be relied on for the determination of appropriate prices. And there is less of a margin for error in case of unintended distributional effects because the net benefits to the fishery as a whole are expected to be substantially smaller.

Conclusions

The generally favorable outcomes under the AFA provide no assurance of favorable outcomes under the proposed rationalization program for the BSAI crab fisheries. To the contrary, the economic analyses commissioned by the Council for both the AFA and the proposed crab rationalization programs indicate serious problems with the crab program. In particular, the choice of a 90 percent-10 percent IPQ program is highly unlikely to provide a reasonable balance between the interests of processors and harvesters.

An IPQ program in which processors are guaranteed 100 percent of their harvesting history would almost certainly result in most, if not all, of the benefits of the rationalization program accruing to processors. The 90 percent-10 percent proposal appears to be a step in the direction of a compromise that less overwhelmingly favored processors. However, it is not clear why the 100 percent program should have been the apparent starting point.

A more obvious approach would be to begin by considering the effects of a standard IFQ program. Both the Halvorsen, Khalil and Lawarree study and the Milon and Hamilton study indicate that a straight IFQ program would benefit both harvesters and processors. Given the existence of concerns that an IFQ program might instead result in adverse outcomes for processors, consideration of modifications to the program to rebalance the outcomes would be reasonable. Regionalization is one such modification, and whatever its primary purpose, one effect of regionalization in the BSAI crab rationalization program is to increase processors' bargaining power.

The allocation of IPQs would be another possible modification. Restricting deliveries of some portion of the harvest under IFQs to processors holding IPQs would tilt the distribution of the benefits of the program in favor of processors, with processors faring better the larger the share of IPQs in the total harvest. Given that it is not clear that processors would fare badly without IPQs, as well as the total

lack of practical experience with IPQs, it would be reasonable to limit the original allocation of IPQs to a modest share of the total harvest. And if the goal is to have an effect similar to the overall provisions of the AFA inshore cooperatives, which allow for the possibility that a processor's claim on its processing share can be eroded over time or even completely lost, then this share should most likely be less than 50 percent.

The Council has commendably committed itself to closely monitoring the outcomes under the BSAI crab rationalization program and making modifications to the program if the outcomes are judged to be unsatisfactory. Therefore if it turned out that the initial allocation of IPQs was seen to be causing unsatisfactory results, the Council could modify the allocation accordingly. Because IPQs do not contribute to the realization of the efficiency benefits of rationalization, such changes would have primarily only distributional results. Such a flexible approach would appear to be clearly superior to one in which the Council commits itself to a 90 percent-10 percent program with the intention of making unspecified modifications to other aspects of the program if the outcomes are considered unsatisfactory.

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COMMUNITY IMPACTS RELATED TO CRAB RATIONALIZATION UTILIZING PROCESSOR QUOTAS

This paper condenses information concerning crab rationalization affects on communities as presented in the North Pacific Fishery Management Council's (Council) analyses. The emphasis of this examination is on the "two-pie" or processor quota aspects of the proposed program. Also, the paper focuses on the community of Kodiak. However, the general type of information presented in the Council analyses

for Kodiak is similar for Dutch Harbor and, to a lesser extent, a few other communities. Most of the information in this paper is taken directly from Council documents and is referenced as such. This paper presents a more coherent picture of the community impacts expected under crab rationalization. All of this information was available to Council decision makers and, according to their official record, comprised a basis for their decisions.

A thorough review of the Council's crab rationalization analysis documents reveals absolutely no quantitative analysis of community impacts.¹ What quantitative impact analysis exists focuses on allocations strategies to harvesters and processors. There is no quantitative analysis or discussion of the impacts to communities, regions, states, or the Nation as a whole.

The most concise, and perhaps the only qualitative summary of expected impacts of a "two-pie" allocation on the community of Kodiak is found in the Social Impact Assessment.

Kodiak processors at present do not have a substantial established history in the Bering Sea crab fisheries for the qualifying periods being considered. While important to BSAI crab processing in the more distant past, local processors have minimal contemporary involvement, being in some cases effectively restricted to short season's "last load" deliveries of locally based vessels. In a rationalized Bering Sea crab fishery with only harvester rights allocated, Kodiak processors generally feel that they could compete for more than their historical percentage of the Bering Sea crab processed in Kodiak. That is, the thought is that in a system free from a race for crab (allocated harvester rights) but unconstrained as to where crab can be delivered (no allocated processor rights, cooperatives, or regionalization), Kodiak processors could compete by offering higher prices to compensate for their relatively greater distance from the resource. The co-op option featuring assignment of quota to processor involved co-ops based upon where the majority of catch has historically been delivered would effectively serve to exclude Kodiak processors from the BSAI crab fisheries. *Similarly, direct processor allocations would serve to diminish the role of, if not completely exclude, Kodiak processors from the fishery, with the degree of the effect dependent upon the percentage of the processors' history which if firmly allocated the higher the percentage more firmly allocated by past processing history (away from Kodiak processors, from their perspective), the more potentially harmful the effect.* For instance, a 100 percent allocation of processor history would constrain Kodiak processors to one to three percent of Bering Sea crab, unless they could somehow buy a greater share from a willing seller.² *(emphasis added)*

The analysis presented above is unequivocal in its prediction of the negative affect on Kodiak of a two-pie system with processor shares. Therefore, if the Council and the State of Alaska base their support of a two-pie system, with 90 percent of the processing privileges directly assigned to specific processors, on the analysis documents they are explicitly attempting to legislatively depress Kodiak's (and other smaller communities) future benefits from rationalized BSAI crab fisheries.

Summary of Council Analysis Statements Concerning Community Impacts

There are four general sections of the analysis within which community impacts would reasonably be described and analyzed:

- (1) Section 2.6: Community and Social Impacts (pages 105–137) and specifically Section 2.6.4: Detailed Community Level Impacts.
- (2) Section 3.6: Regionalization (from the May 2002 document and modified by trailing amendments)
- (3) Section 3.16: Economic Effects (pages 395–408).
- (4) Appendix 2-6: Community Profiles and Social Impact Assessment (SIA)

¹Documents reviewed for this paper include: (1) North Pacific Fishery Management Council (NPFMC). 2002. Bering Sea Crab Rationalization Program Alternatives: Public Review Draft. May, 2002. Including appendices; (2) EDAW (SIA). 2002. Social Impact Assessment, BSAI Crab Rationalization: Overview and Community Profiles. Appendix 2-6 to NPFMC 2002.; (3) NPFMC AP/CQS/S. 2002. BSAI Crab Rationalization Program Trailing Amendments: Additional Provisions, Captain's Quota Shares, and Sideboards. December 2002.; (4) NPFMC CP/BA/DC. 2003. BSAI Crab Rationalization Program Trailing Amendments: Community Protection, Binding Arbitration, and Data Collection. February 2003.; and, (5) NPFMC CP/BA. 2003. BSAI Crab Rationalization Program Trailing Amendments: Community Protection and Binding Arbitration. April 2003.

²SIA, page 127.

Section 2.6.4 is presented below in its entirety:

As noted in the introduction to this section, community and social impacts of crab rationalization approaches are discussed both in this section and in an appendix to this volume, and these two discussions, taken together, comprise the SIA for crab rationalization. Appendix 2-6 (Social Impact Assessment: BSAI Crab Rationalization Overview and Community Profiles) details the localized nature and intensity of engagement with and dependency on the crab fishery at the community level, and presents an analysis of the direction and magnitude of the social impacts likely to result from crab rationalization for the series of communities profiled as well as for the CDQ region.

Section 3 of the document presents an analysis of the alternatives via a variety of types of impacts. Communities are not mentioned in the analysis including environmental impacts, endangered species, marine mammals, or safety.

Scattered throughout the SIA and analysis sections are various suggestive or summary statements about the ability of estimating or forecasting community impacts.

Some communities could also be affected by rationalization. In the current derby fishery, processing activity is likely to be located to facilitate success in the race for fish. In a slower rationalized fishery, processing activity could relocate to different communities to realize cost efficiencies. Communities that increase processing under rationalization will benefit from the program. Communities that lose processing activity would realize less benefits in a rationalized fishery. The regionalization alternatives are intended to prevent some of the redistribution of processing activity to protect communities that have benefited from the distribution of processing in the current race to fish. The extent of the impacts of rationalization on communities depends on whether these regionalization alternatives are adopted and whether they succeed in achieving their goals.³

Under a two-pie IFQ program, if the entire fishery is allocated through processing shares, processor entry would require the purchase of processing shares. Processing shares in this program would create a regulatory barrier to entry. The extent of the barrier would depend on the market price of processing shares, which cannot be predicted. The relatively few number of processors in the crab fisheries could lead to a limited market for processing shares, which would complicate entry to the processing sector. Crab in a fishery with fully allocated processing privileges, however, would have a lower ex vessel price.⁴

At least eight communities that are home to BSAI crab processors could be directly impacted by the regionalization provisions under consideration. The overall impact on communities cannot be determined until the regionalization alternatives are selected and the communities are defined.⁵

The small governmental jurisdictions could also be impacted by the rationalization of the crab fisheries. As noted above, depending on the alternatives chosen, communities might be protected by a regionalization program. The regionalization options would either directly protect individual communities or would simply divide the fisheries into regions. If communities are directly protected, the rationalization is unlikely to have negative effects on those communities. Under a more general regionalization program that divides the fishery into two regions, it is likely that communities would receive limited protection. Under this more general protection some processing activity could move between communities in a region. This is likely to benefit those communities that receive additional processing activity and harm communities that processing activity leaves. Similarly, if no regionalization program is incorporated into the rationalization program some communities would benefit from rationalization, while others would suffer some losses. Fish taxes would likely be redistributed with the redistribution of processing activity. In addition, the provision of support services and associated sales taxes will likely be redistributed to the extent that deliveries to processors are redistributed in a rationalized fishery.⁶

Increased efficiency in the fisheries arising from rationalization could also reduce the provision of support services and sales taxes, if the fleet is able to reduce their overall costs. These savings may occur in large communities as well

³NPFMC, page 406.

⁴NPFMC, page 407.

⁵NPFMC, page 428.

⁶NPFMC, pages 429–30.

as small. Since the redistribution of activity and the increased efficiency cannot be predicted the effects of the rationalization cannot be fully predicted.⁷

The analysis attempted to learn about processor quotas from other fisheries. This was a difficult undertaking in that such a management measure apparently does not exist in any other fishery worldwide. "Several program aspects of the alternatives are unique. For example, no two pie IFQ programs have been implemented in any fisheries to date."⁸

Analogies were drawn by many to pollock AFA co-ops. The crab rationalization analysis presented several statements concerning those analogies, demonstrating that pollock co-ops and processor shares are fundamentally different:

There is no parallel for that [two-pie] system under the current pollock co-op system.⁹

Pollock co-ops are plant-specific for the shore processing sector, which makes them effectively community specific in terms of social impacts. Under the proposed BSAI crab co-ops, company level rather than plant level co-ops are contemplated. This means that shifts of landings and processing effort between communities could occur in a way (or to a significant degree) that they cannot under the pollock co-ops.¹⁰

Additional information was gathered from other studies and reports. One of the most important of such other reports is the 1999 National Research Council's report "Sharing the Fish". The following excerpt concerning processor shares is from the Council analysis:

The NRC report "Sharing the Fish" included a discussion of the merits of allocating either a portion of the quota to processors or alternatively creating a separate class of shares for processors. Processors are thought to have had mixed results under IFQ programs. When adversely affected, processors are argued to suffer from stranded capital and lower profitability. Processor losses could also have negative impacts on isolated communities. Processors that are successful in IFQ fisheries tend to obtain results through "contractual methods or vertical integration". The study concludes that if protection of processors is an "appropriate social goal, this could be accomplished by allocating separate harvester and processor quota." The report also suggested that other methods, such as buyouts or permitting processors to own harvester quota might be preferred to processor quotas, if processor protection is a concern.¹¹

The NRC report's full recommendation for shares to other entities such as processors is more robust. While the NRC finds no compelling reason to establish a two-pie system they did recommend consideration of community allocations of IFQs:¹²

Processor Allocations

Recommendation: On a national basis, the committee found no compelling reason to recommend the inclusion or exclusion of processors from eligibility to receive initial quota shares. Nor did the committee find a compelling reason to establish a separate, complementary processor quota system (the "two-pie" system). If the regional councils determine that processors may be unacceptably disadvantaged by an IFQ program because of changes in the policy or management structure, there are means, such as buyouts, for mitigating these impacts without resorting to the allocation of some different type of quota, with a concomitant increase in the complexity of the IFQ program. For example, coupling an IFQ program with an inshore-offshore allocation would preserve the access of shore-based processors to fishery resources. Whatever method is chosen, it should not have the effect of subsidizing excess processing capacity. Depending on regional considerations, some councils may choose to allow processors to acquire quota share either through transfer or through ownership of harvesting vessels that are entitled to an initial allocation of quota.

⁷ NPFMC, page 430.

⁸ NPFMC, page 396.

⁹ SIA, page 18.

¹⁰ SIA, page 18.

¹¹ NPFMC, page 256.

¹² National Research Council. 1999. "Sharing the Fish: Toward a National Policy on Individual Fishing Quotas." National Academy, Press. Washington, D.C. Pages 205–207.

Allocations to Communities

Recommendations: The committee recommends that councils consider including fishing communities in the initial allocation of IFQs, where appropriate, and that the Secretary of Commerce interpret the language in the Magnuson-Stevens Act pertaining to fishing communities (Sec. 303 [b][6][E] and National Standard 8) to support this approach to limited access management. Congress should allow, though a change in the Magnuson-Stevens Act if necessary, councils to allocate quota to communities or other groups, as distinct from vessel owners or fishermen. Where an IFQ program already exists, councils should be permitted to authorize communities to purchase, hold, manage, and sell IFQs. These communities could use their quota shares for community development purposes, as a resource for preserving access for local fishermen, or for reallocation to member fishermen by a variety of means, including loans. If the communities chose to allocate the rights to individuals, they could be constrained by covenants or other restrictions to be nontransferable. Regional fishery management councils should determine the qualifying criteria for a community that is permitted to hold quota. A range of factors, such as proximity to the resource, dependence on the resource, contribution of fishing to the community's economic and social well-being, and historic participation in the fishery, may be among the factors that a council considers when setting criteria for establishing which communities may hold quota. The range of criteria will have to be carefully considered and weighted and the implications of defining these criteria would have to be examined fully.

One of the issues raised by the community of Kodiak and others is the inclusion of recent participation in the analysis. This is neither a new nor recent concern and it is one the Council is well aware of. "In addition to the issues raised in the NRC report, NOAA GC has emphasized that the failure of the halibut and sablefish IFQ program to give sufficient consideration to recent participation was an important issue in the lawsuit filed against that program."¹³

Information Concerning Impacts to Kodiak

The Council analysis documents present a great deal of information concerning crab fisheries and how they related to Kodiak during the last decade of the twentieth century. This information appears primarily in the harvesting and processing sections of Section 2.6 and in the Kodiak section of the SIA (pages 102–129).

The crab considered for rationalization, referred to as PRP, consist of nine species and/or fisheries.¹⁴ Of these, the three historically most important to Kodiak are Tanner crab (opilio and baridi) and Bristol Bay red king crab. There has not been a fishery for baridi since 1996 and only a very low harvest of opilio since 1999. Therefore, the species of most immediate interest to Kodiak is Bristol Bay red king crab.

A specific portion of the Kodiak based fleet in particular and the Kodiak fishing community in general are dependant on PRP crab. "[Table 2.6-13] indicates, for example, that PRP crab accounts for 35.5 percent of the total value harvested by the combined Kodiak fleet. As shown, although Kodiak has a large and diversified fleet, the Kodiak community fleet is relatively more dependent on the BSAI crab species proposed for rationalization (by far) than any other local Alaskan Fleet."¹⁵

The relative dependence of the Kodiak fleet on PRP crab, while very high, is still understated. This is because there was no fishery for Bristol Bay red king crab, the most valuable of the PRP species, during two of the years used in the analysis while fisheries for salmon, pollock, Pacific cod, and other species continued.

The analysis presents the value and poundage of rationalized crab species processed for certain areas and communities. However, while Kodiak is one of the two communities listed, the information for Bristol Bay red king crab is suppressed due to confidentiality.¹⁶ Tables presented in Appendix 3 to the SIA provide much more information concerning Kodiak as well as other community participation in the fisheries. However, the PRP crab species are combined and therefore individual species/fisheries data are not available.

¹³ NPFMC, page 193.

¹⁴ The species included in the crab rationalization plan: Bering Sea opilio, Bristol Bay red king crab, Bering Sea bairdi, Pribilof red king crab, Pribilof blue king crab, St. Matthew blue king crab, Eastern Aleutian Islands (Dutch Harbor) golden king crab, Western Aleutian Islands (Adak) golden king crab, and Western Aleutian Islands (Adak) red king crab.

¹⁵ NPFMC, page 111.

¹⁶ NPFMC, Tables 2.6-20 through 2.6-26.

Tables 2.6-27 through 2.6-29 of the NPFMC 2002 analysis attempt to represent processor dependency for the PRP crab species during the period 1991–2000. The data indicate that PRP crab account for 1.6 percent of the total PRP crab processed in all areas during the period but 4.2 percent of the value of all species processed in Kodiak. The explanation of the data, however, leaves some doubt as to their usefulness. “[I]t is important to bear in mind that these data cover the full spectrum of processing operations in a given locality, and not only those that process BSAI crab. It thus represents community dependence on BSAI crab at a relatively high level of abstraction and may not reflect any specific operation in the community, and the data may represent more in the way of collective entity dependency rather than community dependency.”¹⁷

The change in relative crab landings in Kodiak is discussed in the documents. These qualitative discussions relate both to why the level of landings have changed and what aspects of fishery management may affect them. The discussion also overlaps to other community impacts such as services and taxes.

After 1996, all pots had to be removed from the fishing grounds within 7 days of the end of the season. Many Kodiak Bering Sea crab boats report that they are not large enough to carry both a load of crab and all their pots, so that this change in regulation severely limited their ability to deliver crab to Kodiak, especially during high GHL years. Such boats were limited even on the last (or only) delivery trip of the season. For their last trip, such boats were essentially forced to deliver to a Bering Sea processor, return to the grounds and pick up their pots, and then go to Kodiak. Some harvesters also reported that processors required them to deliver all crab to them, by linking such deliveries to markets for other fish. Still, by 1999 the Kodiak processors and fleet had evidently adapted to the extent that Kodiak deliveries and processing were at the same levels as the early 1990s. The sharp increase in 2000 may be due to a number of factors. One would be the great decline in the GHL and harvest, so that many vessels had only one delivery trip, often of a partial load, that allowed them to carry their empty pots as well. Kodiak processors may also have offered price incentives, for various reasons.¹⁸

Kodiak processors believe that they could compete and increase their market share for BSAI crab, especially in a rationalized fishery, which would reduce the incentives for quick (Bering Sea port) delivery. They cite the 2000 crab season as support for this contention, as they greatly increased their market share over that of the recent past. Thus, any alternative which limits the ability of Kodiak processors to compete for BSAI crab could have potential adverse effects on both Kodiak processors and crab vessels. It would be in addition to the competitive advantage that Bering Sea processors reportedly achieve over Gulf of Alaska processors from rationalized [AFA pollock] fisheries in the Bering Sea in relation to the open access fisheries in the Gulf of Alaska.¹⁹

For Kodiak, local BSAI crab processing is not taking place because of inefficiencies in the fishery that, in turn, make the lower costs of local processing not worthwhile in an unrationalized system.²⁰

Implications to Communities From Combined Affects of Crab

Rationalization

The analysis does not quantitatively, nor for that matter in one location qualitatively, address the expected combined effects of the various management measures. Certainly such analysis is not conducted for communities. However, by drawing some of the points from the Council analysis together it is possible to make a reasonable projected of expected impacts.

Potential for Oligopsony

The analysis states “[A]n oligopsony exists when a limited number of buyers of a product exists. These buyers can influence ex vessel prices by refraining from purchases.”²¹

The crab processing industry is dominated by several large crab processors. The following information is for the Bristol Bay red king crab fishery. Similar concentration occurs in the Bering Sea opilio fishery.

¹⁷ NPFMC, page 133.

¹⁸ SIA, page 119.

¹⁹ SIA, pages 123–4.

²⁰ SIA, page 128.

²¹ NPFMC, page 403.

Average of top four processors ²²	15.09%	
Combined concentration of top 4 processors ²³	60%	
Total processing owners ²⁴	26	
Median processor allocation ²⁵	1.0%	
Average processor allocation ²⁶	3.8%	
Number of processors allocated $\geq 20\%$ ²⁷	<3	
Number of processors allocated $\geq 30\%$ ²⁸	0	
Number of catcher/processors ²⁹	11	
Total C/P allocation ³⁰	8.1%	

These data probably underestimate the level of concentration. Processor concentrations are grandfathered at any level with verified contracts entered into by June 10, 2002. Any such contracts are unknown at this time and are not required to be made public until the time of allocations.

As is the nature of manufacturing in an unrestricted industry, participants enter and leave on a fairly regular basis. This has been the case in crab processing. The difference between the number of processors and how change has occurred during the 1990s is illustrated in information from Tables 2.3-1 and 2.3-2 of the Council analysis. Data are not presented in the analysis for the number of processors prior to 1991. The number of processors has decreased during the period due to a dramatic decrease in catcher processors and floaters.³¹ The number of shorebased processors has remained relatively constant at 15 in the Bristol Bay red king crab fishery since it resumed in 1996.

Year	Delivery Percentage	Number of Processors
1991	71%	29 qualified
	29%	27 non-qualified
2000 ³²	96%	20 qualified
	4%	3 non-qualified

Foreign ownership of processors is widespread in the crab fishery. Several of the major crab processors including Peter Pan Seafoods, UniSea, and Westward Seafoods are fully owned by foreign companies while Alyeska Seafoods and Stellar Seafoods³³ are partially (25 percent or more) foreign owned.³⁴ Under the recommended rationalization program, 47 percent of the Bristol Bay red king crab and 36 percent of the Bering Sea opilio processing quota will be allocated to the afore named five foreign owned processors.³⁵ The qualified crab processing facilities owned by these firms which will receive allocations are presented in Appendix 3-3.

Company Catcher/processor	Shorebased	Floater
Peter Pan Seafoods	King Cove Port Moller	Blue Wave
UniSea	Dutch Harbor St. Paul	
Westward Seafoods	Dutch Harbor	
Alyeska Seafoods	Dutch Harbor	
Stellar Seafoods		Stellar Sea

²² NPFMC, Table 3.4-13.

²³ NPFMC, Table 3.4-13.

²⁴ NPFMC, Table 3.4-13.

²⁵ NPFMC, Table 3.4-5.

²⁶ NPFMC, Table 3.4-5.

²⁷ NPFMC, page 283.

²⁸ NPFMC, page 283.

²⁹ NPFMC, Table 3.4-2.

³⁰ NPFMC, Table 3.4-2.

³¹ From 9 floaters and 25 C/Ps in 1991 to 2 and 6, respectively, in 2000.

³² The percentage is estimated based on analysis text since the percentage for non-qualified processors is confidential.

³³ Figure 8.7 of the January 2000 AFA report to Congress considers Stellar Seafoods to be 100 percent owned or controlled by Peter Pan Seafoods.

³⁴ NPFMC, Table 3.14-1.

³⁵ NPFMC, Table 3.14-2.

In addition, Trident Seafoods is known to be a major processor of Bristol Bay red king crab as is Icicle Seafoods. Their qualified crab processing facilities listed in Appendix 3–3 include:

Company Catcher/processor	Shorebased	Floater
Trident	South Naknek Akutan St. Paul Island	Akutan Bountiful Alaska Packer Glacier Enterprise Independence Northern Enterprise Sea Alaska Royal Enterprise Tempest Western Enterprise
Icicle		Arctic Star Bering Star Coastal Star Evening Star Northern Victor

Of these seven companies, only Stellar Seafoods is not an AFA qualified pollock processor owner. Harvesters have expressed concerns about potential loss of bargaining power if there is a “two-pie” rationalization system. “Harvesters claim that under the AFA crab sideboards imposed on processors, harvesters have faced limited markets and been forced to be price-takers and thus received less value for their crab than they would otherwise have expected. The belief is that processors may acquire even more leverage in the price-bargaining relationship under any rationalization plan other than the “one-pie” (harvester only IFQ) alternatives. In short, many harvesters believe that they have already been adversely affected in this way by the crab sideboards imposed on AFA-qualified processors by the AFA. Once the capped processors reach their limits, there are very few alternative markets to which a harvester can sell.”³⁶

This brings to mind a statement from almost a century ago.

We can let Alaska become the private preserve of a few great special interests to be developed and controlled at their pleasure and as their profit may dictate. . . . Or we can treat Alaska as the future home of hundreds of thousands of free American citizens, and its resources as a trust to be developed and conserved for their benefit and for the benefit of all the people-who are its owners. Gifford Pinchot, Saturday Evening Post, December 16, 1911, pp12 ff.

Market Implications of Processor Quotas

The Council commissioned a study to specifically examine the impacts on the crab fisheries from alternate rationalization programs.³⁷ It contained a number of statements related processor quota markets and the effects on ex-vessel values from a two-pie system. Overall, they found that more restrictions placed on where a harvester may deliver, the more policy benefit shifts towards processors.

Typically markets [for processor permits] work best when there are a large number of buyers and sellers in the market. In “thin” markets for permits, a small number of firms may have little incentive to trade if there are small differences in the firms’ productions costs and/or the firms perceived the permits can be used for strategic advantage.³⁸

If there is a market share guarantee for processors, then there is not a threat of losing deliveries if the ex-vessel price is lowered. Therefore, a processor who

³⁶ SIA, page 118.

³⁷ Walter Milon and Steve Hamilton, “A Comparative Analysis of Alternative Rationalization Models for the Bering Sea/Aleutian Islands (BSAI) Crab Fisheries,” March 2002, Discussion Paper for the North Pacific Fishery Management Council. 66 pp.

³⁸ Milon and Hamilton, Page 9. Referenced to (1) “Small Pollution Markets: Tradeable Permits versus Revelation Mechanisms,” F. Andersson, 1997. *Journal of Environmental Economics and Management* 32:38–50. (2) “Raising Rival’s Costs Strategies via Emission Permits Markets. E. Sartzetakis. 1997. *Review of Industrial Organization* 12:751–765.

wants to maximize profits would lower his ex-vessel price and harvesters would still have to deliver to him.³⁹

In general, the less the market is segmented, the larger the prevailing ex-vessel prices under processor price competition. . . . [t]he more restrictions that are put in place to govern the location to which individual harvesters must deliver, the less the degree of ex-vessel price competition to acquire market share.⁴⁰

Other studies reviewed in the Council analysis seem to agree on the effects of thin markets. "The authors [Matulich and Sever] caution that transaction costs can inhibit efficiency. Specifically, they point out that thin harvesting or processing share markets (or markets with few participants or shareholders) could reduce efficiency gains in both sectors. Limited numbers of participants would limit the ability of participants to purchase the number of shares necessary to operate efficiently. Vertical integration is argued to have the potential to contribute to these efficiency losses."⁴¹

Vertical integration does exist in the crab fisheries. Under the proposed Bristol Bay red king crab rationalization plan, there are 31 vessels with documented affiliation with a total of 6 processors. This will result in 4 processors being allocated an amount over the one percent harvest ownership cap and at least one processor receiving over 5 Percent⁴²

These 31 vessels will be allocated 12.6 percent of the total harvest allocations.⁴³ As stated previously, there may well be greater vertical integration due to contracts entered into on or before June 10, 2002 and not yet made public.

Processor Bargaining Tactics in a Two-Pie System

The Council analysis addressed some of the potential implications of bargaining between harvesters and processors in a two-pie system.

Harvesters and processors in the crab fisheries are related on several levels ranging from common ownership to simply repeated transactions in the buying and selling of crab. Since the relationships are often manifold, their dynamics are also quite complicated. Understanding these relationships, however, is critical to understanding the applicability of a rationalization program in a fishery.⁴⁴

Harvesters and processors also have support relationships that are important to both sectors. Some processors sell bait, fuel and food to vessels (often on credit) and store gear for vessels during the offseason. At times, vessel owners with large debts to processors will give the lending processor a lien on their vessels. Whether a lien is taken is dependent on the relationship between the vessel owner and the processor. Because of confidentiality, the number of these liens and whether and the extent to which they are used to exert pressure on vessel operators is not known. Vessel owners also enter contracts to tender salmon and herring for processors outside of the crab season. Both vessel owners and processors contend that tendering relationships are important to their businesses. The extent to which either side exploits the other based on these tendering contracts is also not known.⁴⁵

Some harvesters also reported that processors required them to deliver all crab to them, by linking such deliveries to markets for other fish.⁴⁶

Pricing [also] varies regionally among processors in the crab fisheries. Regional price differences have several sources. In fisheries where vessels make several deliveries, the availability of goods and services in a location can be important to fishers. Food, bait, fuel, and a good port facilities can make a processor more attractive to vessels wishing to offload harvests. Processors in locations that offer less goods and services may pay price premiums to induce fishers to sell their harvests. Processors that are distant from grounds may also need to pay a premium price to compensate fishers for time away from the grounds while making deliveries. Proximity to consumer markets can also influence ex-vessel prices. Processors with less access to consumer markets may pay slightly less for crab inputs than processors closer to end markets since they must bear the cost of delivering the crab to market.

³⁹ Milton and Hamilton, Page 41.

⁴⁰ Milton and Hamilton, Pages 41–2.

⁴¹ NPFMC, page 402, referencing Matulich and Sever, "Reconsidering the Initial Allocation of ITQs," Land Economics (1999).

⁴² NPFMC, Table 3.4-14.

⁴³ NPFMC, Table 3.4-27.

⁴⁴ NPFMC, page 99.

⁴⁵ NPFMC, page 100.

⁴⁶ SIA, page 119.

Generalizations concerning the spatial distribution of ex-vessel prices may be difficult to make. Dutch Harbor, where the most processors are located can be used as the basis for determining prices. The prices in Kodiak are higher (approximately \$0.20 in the recent Bristol Bay red king crab fishery) because of the longer distance to the fishing grounds and the proximity to consumer markets. . . . These minor price differences between ports are thought to have little effect on the competitiveness of vessels that deliver to the facilities at the different ports, when the other costs are considered.⁴⁷

To an unknown extent, price negotiations and delivery patterns are influenced by relationships between harvesters and processors. Some harvesters tender salmon and herring for processors. Maintaining this contract might require the harvester to continue to deliver crab to the processor. Similarly, some harvesters receive financial support from processors. Whether formalized or not, some of these harvesters have a perceived obligation to deliver crab harvests to the processor with whom they have the financial relationship. The extent of the impact of these relationships and obligations on prices and delivery patterns is not known.⁴⁸

Conclusions of Community Impacts Under a Two-Pie System

The impact to communities of allocations to processors within those communities is not at all certain. This is due to the transferability of processor quotas between plants owned by the same company. "Because allocations are to processing companies, however, and not to specific facilities or communities, economic decisions at the corporate level to shift production from one facility to another may have community effects that are essentially unknowable beforehand. . . . Given the tendency of the marketplace to reveal costs and incentives that had not previously been well known, however, this assessment is not one with a great deal of certainty."⁴⁹

The issue of processor consolidation is germane to the issue of community impacts. If operations do consolidate they will occur in fewer plants and, without a doubt, some communities will suffer losses. The analysis states that "[w]ith processor quota shares, we can not predict if the processing sector will consolidate".⁵⁰

There are three shorebased pollock co-ops in Dutch Harbor owned by the companies listed above (Alyeska, Unisea, and Westward) and one in Akutan (Trident). "Under pollock co-ops, shoreplants have remained more-or-less self-contained, self-sufficient enterprises in the community. This varies from plant to plant, but operations tend to be of an industrial enclave nature, with a relatively low volume of purchases of goods and services from the local support sector. Crab co-ops are not seen as likely to change this pattern."⁵¹

Processing enclaves do not exist in Kodiak. Only two percent of the population lived in group housing in Kodiak in 2000⁵² compared to 51 percent in Unalaska the same year.⁵³ The processing plants in Kodiak purchase utilities, supplies and services from local vendors as do the workers who live in the community.

Therefore, to the extent that processing is reduced in Kodiak, and shifted to processors which operate from enclaves, there will an overall net reduction in local economic activity in Alaskan communities related to crab fisheries. For all the reasons discussed above, this is a likely outcome under a two-pie crab rationalization program.

PREPARED STATEMENT OF MICHAEL B. LAUKITIS, PRESIDENT,
NORTH PACIFIC FISHERIES ASSOCIATION

U.S. Senate Committee on Commerce, Science, and Transportation
Senator JOHN MCCAIN, Chairman

Dear Senator McCain:

The North Pacific Fisheries Association (NPFA) thanks you for the opportunity to comment on the Bering Sea Crab Rationalization Plan. NPFA was founded the year Alaska became a state and is one of the oldest fisheries organizations in the State of Alaska. Our members include Bering Sea crabbers, halibut and sablefish IFQ longliners, Gulf of Alaska fixed-gear groundfish harvesters, fishermen who custom

⁴⁷ NPFMC, pages 101-2.

⁴⁸ NPFMC, page 102.

⁴⁹ NPFMC, page 136.

⁵⁰ NPFMC, page 162.

⁵¹ SIA, page 67.

⁵² SIA, Table 2.6-4.

⁵³ SIA, Table 2.2-5.

process their own catch for export markets, and salmon fishermen. Much like family farmers we are independent fishermen and fishing families who go out on our own boats and work to receive the highest value for our catch.

NPFA supports the conservation and safety aspects of the Bering Sea Crab Rationalization Plan which are much needed for the benefit of future sustainable crab stocks and for the benefit of fishermen who risk their lives to harvest American seafood. We also support individual fishing quotas (IFQ's) for harvesters. Many of our members are involved in the halibut and sablefish IFQ fisheries, and we have seen that this carefully designed program is benefiting everyone involved in the industry. The halibut industry went from chaos prior to 1995 to a stable and safe fishery where the industry is putting very high quality seafood products on American's kitchen tables. We believe the majority of the crab plan could go forward as written.

There is one very important aspect of the Crab Rationalization Plan that NPFA does not support, and that is Processor Quotas, or PQ's. NPFA and many people in Alaskan coastal communities see corporate consolidation in our fisheries and the drive by multi-national food companies to control Alaska's rich fishery resources, our management agencies, our coastal communities, and eventually our fishermen as the number one threat facing us today. Our fishermen and communities want the full protection of Federal anti-trust laws, and we want to be able to develop new markets in our communities and to be able to sell our catch in open markets. We believe healthy competition brings innovation, and although we are in an old profession many of us pride ourselves as small business entrepreneurs.

Processor quotas by definition are anti-competitive. They give a market share guarantee that eliminates any incentive to maintain ex-vessel prices above the monopoly level. We do not believe the binding arbitration program contemplated by the North Pacific Fisheries Management Council is adequate to protect fishermen's interests. The Council's expertise is in fishery management and conservation. Obviously its expertise is not in planned economies and anti-trust law. This program shifts benefits to the processing sector. Also, after the American Fisheries Act we have seen that the processing sector uses the market power derived from processor shares in the Pollock fishery to further shift benefits away from harvesters in other *non*-Pollock fisheries. We fear that this trend towards processor quotas only begins here and will eventually affect all of Alaska's fisheries to the detriment of independent fishermen.

Awarding cartel status to the snapshot of companies who happen to process crab in Alaska at this time would also harm other Alaskan processors who might not be active in that region of the state currently. (The short history of the American Fisheries Act is a case in point. Several prominent Alaskan processing companies who argued for free markets for Pollock leading up to the Act but were "left out", were then obviously disadvantaged versus their competitors who had a guarantee share and equity in the Pollock fishery, so they are now leading the charge for processing quotas in the crab fishery.) Furthermore this crab cartel would harm competing processors in other coastal regions of the United States who would then have to compete with already powerful vertically integrated multi-national food companies who would be granted a guaranteed share of the resource as well as pricing power from the boat all the way to the consumer. Although it may seem to be good for Alaska to have the companies who operate here given such dominance in the marketplace, it is telling that the overwhelming majority of communities and fishermen in Alaska do not support processor shares. It needs to be asked whether granting processor shares to companies who happen to process in Alaska's Pollock and crab fisheries eventually triggers uncompetitive consequences for all seafood companies in the United States.

In conclusion NPFA sees the benefits of rationalizing the Bering Sea Crab fishery for conservation and safety reasons. We do not feel rationalization should take place at any cost. The economic analysis used by the North Pacific Fisheries Council to justify processor shares called the Matulich study is seriously flawed as was reported by the GAO earlier this year. Alaskan processors and communities gain protection from other aspects of the Crab Plan (*i.e.*, regionalization requirements for delivery of crab and that catcher boats must deliver their catch in Alaska). The processor share aspects of the program are unacceptable. They upset the balance between processor and independent fishermen and potentially trigger consequences for all fisheries throughout the United States.

Again, thank you for the opportunity to provide written testimony to this hearing. Sincerely,

MICHAEL B. LAUKITIS,
President,
North Pacific Fisheries Association.

PREPARED STATEMENT OF PHILLIP LESTENKOF, PRESIDENT,
CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

My name is Phillip Lestenkof. I am the President of the Central Bering Sea Fishermen's Association (CBSFA), the management organization for St. Paul Island under the Western Alaska Community Development Quota (CDQ) Program. By way of background, the CDQ program was established by the U.S. Congress in 1992 as a mechanism for ensuring that remote and impoverished Western Alaska communities would benefit from rich Bering Sea fisheries. Initially, 7.5 percent of the fisheries were set aside for the 6 CDQ groups that were created, including CBSFA.

I want to thank the Committee Chair and members for the opportunity to provide testimony on the proposed Bering Sea Aleutian Island (BSAI) Crab Rationalization Program (the program) developed by the North Pacific Fishery Management Council (NPFMC) which CBSFA has steadfastly supported over the last four years together with the City of St. Paul, AK.

I. Impacts of Crab Rationalization Program on St. Paul

I will refer to the testimony of Simeon Swetzof, the Mayor of the City of St. Paul for a description of the impacts that the collapse of the opilio and other Bering Sea crab stocks has had on St. Paul Island's economy.

Suffice it to say that, as the local fishermen's association, CBSFA has been stressed by the direct and indirect impacts that the collapsed crab stocks have had on economic activity on St. Paul. Crab processing, for example, enables local processors to cover overhead costs and allows them to process other species valuable to our community and local fishermen, in particular IFQ and CDQ halibut. The low volumes of opilio crab being processed, therefore, have threatened other economic activities including those upon which our local fishermen make their livelihoods for most of the year.

The NPFMC's crab rationalization program will stabilize the situation by ensuring, through regionalized shares, that crab processing will continue to be a viable business activity on St. Paul even under a scenario of reduced crab stocks. More importantly, with a rationalized and regionalized crab fishery, CBSFA's private sector partners will be able to plan and predict outcomes to business decisions more easily. Numerous projects that intend to take advantage of St. Paul's unique location amidst the Bering Sea fisheries to diversify into multispecies processing, are on hold pending enactment of legislation by the U.S. Congress that will implement the program.

In addition, CBSFA is working on a largely CDQ-owned, vertically integrated crab processing and harvesting venture that depends on implementation of the program. This new venture has been approved by the State of Alaska and NMFS as the core project in CBSFA's 2003-2005 Community Development Plan. As part of the plan, CBSFA is negotiating for equity ownership in various crab industry assets. These include:

1. Five percent of the total Opilio crab harvesting quota.
2. Five percent of the total Bristol Bay Red King Crab harvesting quota.
3. More than five percent of the Adak Brown harvesting quota.
4. Five percent of the Pribilof Reds, Pribilof Blues, and St. Matthews harvesting quotas.
5. CBSFA is also negotiating with processing companies to acquire equity stakes in approximately 10 percent of the entire Processor Quota Share pool created by the program.

If successful, CBSFA's plan will represent a significant step in increasing the interests of native-owned Alaskan companies crab industry assets, many of which are currently owned by Japanese interests.

II. The Need for Regionalization

Like the City of St. Paul, CBSFA views the regionalization scheme in the program as the most effective tool for fulfilling the guidelines of Standard 8 of the Magnuson-Stevens Act and accommodating the diverse interests within the BSAI crab fishery. Standard 8 directs the fishery councils to take into account the need for sustained participation of fishing communities in the fisheries. The need for regionalization into northern and southern shares depending on historic activity arose in order to protect St. Paul's (and other BSAI communities') livelihood and the considerable infrastructure investments made to develop a port which has served the BSAI crab industry very effectively and profitably.

During the 1990s, our community benefited from a derby-style, race-for-fish scenario where vessels delivered crab to the nearest available harbor, in order to imme-

diately depart for further loads of nearby abundant crab stocks. In a rationalized fishery however, the race-for-fish, would be eliminated and furthermore, with the Guideline Harvest Levels (GHL) dramatically reduced as a result of the biomass collapse, harvesters would be limited to single trips and would therefore be more likely to deliver their crab to other ports such as Dutch Harbor/Unalaska or to their homeports including Kodiak, where a number of harvesters are based.

Just as harvester and processor investments have been recognized and protected in prior rationalization schemes, both CBSFA and the City of St. Paul took the novel approach of insisting that community considerations needed to be legitimately factored into this process. The stakes were considerable. St. Paul Island, unlike economically diversified communities in the Gulf of Alaska, is almost entirely dependent on crab processing. While St. Paul's strategic location and its existing infrastructure make it a competitive port, most of the processing operations in the Pribilof Islands are "satellite plants" for diversified, parent seafood companies. Therefore, with the incentive for decapitalization and consolidation in a rationalized fishery, St. Paul was at risk of seeing local processing operations retreating south to larger facilities in Dutch Harbor, Akutan, and Kodiak.

Regionalization will stabilize the fishery and ensure that existing processing operations will remain in the northern region in a rationalized scenario. One of the added benefits of regionalization is that the longer runs involved between the fishing grounds and ports such as Dutch Harbor or Kodiak in a non-regionalized scenario would have implied additional fuel costs to harvesters and greater deadloss, to the detriment of the resource.

III. Benefits to the Resource and the Fleet

Environmental benefits will accrue as well from the mechanisms to reduce excess harvesting and processing capacities. With slower seasons in which to prosecute the fishery, fewer crab pots will be lost at sea and deadloss and bycatch will be reduced. A healthier, better managed resource is critical to St. Paul as well, since my community's long-term livelihood depends on the sustainable use of the surrounding Bering Sea fisheries. Finally, experience demonstrates that to the extent that a rationalized management system results in a sustainable, economically viable fishery, then improvements in safety should follow. In a scenario where the "race-for-fish" is eliminated, fatalities resulting from having to fish in poor weather conditions should be reduced.

IV. The "Third Pie": Community Protections and Benefits

Under the proposed program, allocations of harvest shares would be made to harvesters, the CDQ program, and captains. Moreover, processors would be allocated processing shares and harvesters would be permitted to consolidate their efficiencies by forming cooperatives. From a community perspective, establishment of processor shares protects the considerable investments made by processing companies in remote coastal Alaskan communities such as St. Paul. These investments typically include the processing facility itself, labor housing, docks, cold storage, tender vessels, and other infrastructure.

Communities for their part have spent significant resources on harbor improvements, docks, water/sewer systems, roads, emergency support services, and community administration to attract and accommodate processors.

In effect, processor shares are necessary for regionalization to work for communities. As a largely processing town, St. Paul's future is linked to the processors that have invested or will invest there. St. Paul (as is St. George) is heavily dependent on crab processing business in its harbor and on the floating processors within the state boundaries around the island. The community receives benefits from taxes, fuel sales, village corporation land leases, store sales, transportation and employment opportunities provided by the processors operating in the community.

Under the program, processor allocations and the corresponding 90 percent of the harvester allocations will be designated into the earlier mentioned northern and southern regions, based on historic participation. Provisions allowing for the non-regionally designated 10 percent of harvester allocations to be delivered to any processor at any port ensure that a substantial portion of the crab resource will be subject to competition among ports and processors seeking to attract deliveries.

However, as specified in the NPFMC's trailing amendments, a two-year "cooling off period" has been established during which processing shares must remain in communities where processing was historically conducted, so as to avoid a "rush" to consolidation in a few ports immediately after implementation of the program. In addition, communities and CDQ groups such as CBSFA have been granted a right of first refusal on the sale of processing shares to protect crab-processing dependent communities.

To accommodate periods of abundance in the crab stocks and provide opportunities for new processors and communities to compete, caps of 175 million pounds for opilio and 20 million pounds for Bristol Bay red king crab have been established on the amount of IPQs granted for the two largest crab fisheries. However, if stocks continue to remain low (and below those caps) the IPQs will provide stability to the processing sector and crab dependent communities.

Other important community friendly provisions from CBSFA's perspective include an increase in CDQ crab allocations from 7.5 percent to 10 percent of the Total Allowable Catch (TAC). CDQ groups will be required to deliver at least 25 percent of the allocation to shore based processors. Moreover, CBSFA and other CDQ groups have the potential to benefit from provisions extending community purchase rights of harvesting and processing shares to community and CDQ groups. These purchases would be conditioned on the use of these shares for the benefit of community residents. Finally, CBSFA and other CDQ groups have been granted higher ownership caps than individuals purchasing shares in order to give such groups the wherewithal to consolidate their economic interest in the crab fisheries to the benefit of Western Alaska residents.

VI. Conclusion

The NPFMC's BSAI crab rationalization program is a carefully balanced plan that requires the unique structure that has been developed over a four year period to protect all of the participants in this fishery. It is clear that the program increases the economic stakes of communities and CDQ groups in the proper management of fisheries on which they depend for survival. Unlike harvesters and processors, communities cannot "sail away" in pursuit of better fishing grounds once a fishery has collapsed.

We urge Congress to support the NPFMC's plan by enacting legislation as expeditiously as possible. After four years of economic crisis, remote communities in the Aleutian Chain and particularly in the Pribilof Islands are highly dependent on this program for their economic well-being and survival.

Mr. Chairman, and distinguished members of the Subcommittee, thank you for this opportunity to provide written testimony on behalf of the CBSFA. We look forward to discussing these issues with you and your staffs.

PREPARED STATEMENT OF RUDY A. PETERSEN, FISHERMAN, CEO, AND OWNER,
FISHERMEN'S FINEST, INC., F/V AMERICAN NO. 1/F/V U.S. INTREPID

Bering Sea Crab Rationalization

With reference to my letters of August 26, 2002, September 6, 2002, December 13, 2002, and March 6, 2003 (copies enclosed) opposing the North Pacific Fishery Management Council's (NPFMC) proposed "two pie" Bering Sea Crab Rationalization Plan, a plan which endorses "processor shares" for the Bering Sea crab fishery, I hereby submit my written testimony to the U.S. Senate Committee on Commerce, Science, and Transportation; The Honorable John McCain, Chairman.

There should be no doubt on the part of the Committee Members of my opposition to this plan as well as the opposition of the Independent crab fishermen, concerned citizens and Alaskan communities. My letters and petition with over 700 signatures of Americans opposing this plan have been faxed and mailed as set forth above to the following:

- House Resources Committee Members
- Senate Resources Committee Members
- House Appropriations Committee Members
- Senate Appropriations Committee Members
- All members of Washington State Delegation (Governor, Senators, Congressmen, NPFMC members, etc.)
- All members of Alaska State Delegation (Governor, Senators, Congressmen, etc.)

I am submitting this written testimony as I will be unable to attend the hearing in Washington, D.C. in person. I urge you to review my materials once again and to oppose any Bering Sea crab rationalization plan that includes "processor shares" or a "two pie" formula.

Processor quota shares are much bigger than a mere "fish grab." It strikes to the very heart of our fishing industry and if allowed to invade our free market driven industry, the processor quota two pie allowances will negatively impact our fishing industry forevermore.

The Idea of a few fishing companies having control over our crab and other fisheries is not in the best interest of the fishermen nor in the best interest of the public. The resources are after all a public resource; protection of this and all other public resources should be maintained by allowing our competitive free market forces to work, not by granting the processing sector a virtual monopoly as proposed by the North Pacific Fishery Management Council.

FISHERMEN'S FINEST, INC.
Seattle, WA, August 26, 2002

Hon. JOHN MCCAIN,
 Washington, DC.

Re: Bering Sea Crab Rationalization

I am writing to you as CEO of Fishermen's Finest, Inc., an Independent, wholly U.S. owned fishing company located in Seattle, Washington. I operate four small catcher/processor fishing vessels which harvest and process groundfish in North Pacific waters and support some three hundred fishing families from across the country. I am also writing on behalf of the many who share my concerns and oppose the North Pacific Fishery Management Council's proposed Bering Sea Crab Rationalization Plan that endorses processor shares.

Recently, the North Pacific Fishery Management Council voted in support of the Bering Sea Crab Rationalization Plan that would award the processing sector with an anti-trust exemption by allowing processing shares (referred to as a "two pie" system). We oppose the proposed plan which will create a virtual monopoly for a few processors. The Honorable Leon Panetta, head of the Pew Ocean Commission, said in a recent interview for the Alaska Fisheries Report, "I'm just very concerned any time that competition is restricted. What happens when you concentrate power in any one segment of our economy, is that the little guy is bound to be hurt . . . I was very surprised that they (the House Resources Committee) provided an exception for Alaska (and nowhere else in the country). If it's not good for the rest of the country, it's not good for Alaska . . ."

It is wrong to push through this "two pie" system, which has been rejected in all other fisheries, when one sector of the industry—the processors—has the upper hand financially and politically and the small independent financially depressed harvesters have no organized defense.

It is implicitly unfair to the harvesters that originally built the crab fishery and who are currently experiencing great economic hardship due to depressed resources and market conditions. Support of the "two pie" system will give even more control of this fishery to the processors and ultimately will hurt the harvesters even more. It will be the end of the independent fishermen. The small independent business people of this country need your support and therefore I am looking for your help to stop this proposed "two pie" system that would unfairly grant the processing companies, most of which are foreign owned, the upper hand at the expense of the independent fishermen.

Monopolies are bad for America, especially when they involve our natural resources. It is wrong to grant exclusive access to a select few at the expense of the small independent fishermen/businesses of this country. Please do not allow Congress to include wording in the Magnuson-Stevens Act Reauthorization, or in any other Bill, appropriations or otherwise, that allocates crab rights to processors. Concerned U.S. citizens have signed a petition opposing processor shares and we are continuing to gather more signatures. I would welcome the opportunity to talk with you and discuss this important issue in more detail should you need any additional information. Thank you for your consideration.

Sincerely,

RUDY A. PETERSEN

Enclosures: Various Media Articles opposing processor shares (via 1st Class Mail)
 Organizational Charts Illustrating processor foreign ownership (via 1st Class Mail)
 Signed Petitions against processor shares (Via 1st Class Mail)

Kibosh in Kodiak

City rejects North Pacific crab plan

Key Words:

I took them outside, but before we could get to the car, I saw a woman in a red coat and a man in a blue coat running toward me. I saw them again when they were running away from me. I saw them again when they were running away from me. I saw them again when they were running away from me.

"There is a huge ideological divide between the two parties," says the author of *How the Right Took America*, "and it is not going to go away. The only way to get the two parties to work together is to get them to agree on a common goal. That's why I think the only way to get the two parties to work together is to get them to agree on a common goal."

[illegible]

In the end, the British City Group passed a resolution to join the American company. "It is simply common sense," says City Group's chairman, Sir Peter Brabeck-Letford. "We would have preferred otherwise." It is a political as well as a financial decision. The City Group is the largest of the four in the grand industrial group.¹²

Transcript of Mr. Leon Panetta's comments on the Alaska Fisheries Report, August, 2002 regarding the proposed Bering Sea Crab Rationalization Plan:

There's just very concerned among them that competition is restricted. What happens when you concentrate power in any one segment of our economy, is that the little guy is bound to be the loser. It's a very real concern. It's the small independent farmers who pay the price. Any time we have a concentration of power in any one area, it's the small independent farmers who pay the price. Any time we have a concentration of power in any one area, it's the small independent farmers who pay the price. Any time we have a concentration of power in any one area, it's the small independent farmers who pay the price.

The attached articles represent several different media sources, all in opposition to the proposed "two pile" crab rationalization plan or critical of processors' ability to potentially fix prices paid to independent fishermen.

[Click here to return to the original story](#)

sharecroppers

By Michael Brooks and John Pannofardo

Granting exclusive processing rights to big corporations seems pretty backward to fishermen from Alaska to New England. Massive fish processing companies are pushing Congress to give them exclusive rights to control fish markets. The idea is promoted under different names, such as crab rationalization, the two-pole system and processor quota system. The bottom line is always the same: giant corporations eliminate smaller fishermen respecting independent fishermen to shareholder status. Many of these corporate interests are foreign owned, like Hapag-Lloyd (a German line), Huls (a Dutch company), and the Red Sea Shipping Co. (a Saudi-owned company). The United States has a small share of the crab harvest, estimated at 10 percent. The Alaska Fisheries Management Council, 50 percent of our crab harvest would go to foreign processors - by law!

We have seen big corporations do this in other industries. The poultry, pork and beef industries are all dominated by a few big corporations to the exclusion of entrepreneurs and small businesses. The result is a loss of innovation and a loss of competition. It is time to the detriment of the farmers, ranchers and consumers. In fact, 40 percent of America's beef goes to just four companies. As a result, a 1,200-pound steer brings \$30 less to the rancher than it did in 1996, yet it costs the consumer \$300 more. Five companies hold more than 60 percent of the pork market, and just one company controls more than 20 percent of the poultry market.

Now, some of these same multinational food conglomerates are asking Congress to give them control over our American fisheries.

But, Congress doesn't have to act beforehand; the door is to help the processing sector. There are other ways to go about it. For example, if the firm with competing for markets shares is driven by freight costs, let's find the right way to level the playing field between ports on and off the road system. If the problem is an excessive capacity, let's find a way to reduce the capacity of unnecessary investments that they made to compete in the race for fish. At the very least, we should have an environment in which small operators and new innovative business people can enter the market without needing additional capital to buy

The state of Alaska and the federal government need to be pro-active in assisting processors without closing down free markets for fishermen. This would allow councils to focus on managing fisheries for conservation rather than spending time managing the processing sector and all the economic complexity that will undoubtedly accompany a two-quota program.

Processor quota is a highly controversial issue from coast-to-coast. Fishermen from all over the country have gone to Washington, D.C., in recent months to educate Congress about the devastating processor quota would cause for America's fishermen and for our coastal communities. The August edition of National Fisherman magazine has a letter from 45 fishing groups from coast-to-coast who oppose processor quota. Five hundred Alaskan citizens, 11 Alaskan processors and five Alaskan communities have written to Gov. Knowles and the Congressional delegation in opposition to processor quota.

No single issue has created such unity among America's fishing community since the EEZ was created in the 1970s.

Congressional action is required to allow processor quota as it is currently illegal under the Magnuson-Stevens Act. Furthermore, an exemption in our anti-trust laws would be needed.

<http://yourexample.com/cgi-bin/print2000.pl>

to implement the two-price system. Our vote-buy laws were put in place for a good reason: to stop big corporations from dominating markets and crushing mom-and-pop businesses of consumers and working people. By granting big corporations the exclusive rights to buy our fish, Congress would assure that family fishermen are forced off the water while a powerful few processor company executives get fabulously rich. Processor quotas had nothing to do with fish and everything to do with money.

If processor quotas is allowed, there will be no more free markets, no more auctions, and no more independent fish buyers. Big Japanese fish companies like Nippon Suisan call processor quota the "two-pot" system because words like "sharecropping" and "feudalism" are not considered politically correct these days. American fishermen deserve better than to become sharecroppers for foreign conglomerates.

Brooks of Homer is a quota holder in the Alaskan halibut fishery and a fish processor. Rappalardo of Chatham, Mass., is a commercial fisherman and an appointee to the New England Fisheries Management Council.

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ADN Archives
Anchorage Daily News

Tuesday, August 21, 2001
Page: E1
Section: Business
Edition: Final

Salmon fishermen seek settlement

Under the settlement, Heald Packing Co. and British Columbia Packers will deposit \$3.5 million into an escrow account at First National Bank of Anchorage by Aug. 30, according to court papers. A state Superior Court judge must approve the settlement.

Attorneys for the fishermen said the agreement will bring total settlements in the case to more than \$15 million. But several major Bristol Bay fish packers and Japanese importers remain as defendants in the case, the fate of which now rests with the Alaska Supreme Court.

A Superior Court judge tossed out the \$1 billion-plus claim two years ago, ruling that no reasonable jury could find proof that fish buyers conspired to keep prices low to fishermen for their sockeye salmon catches. Suits for the fishermen appealed to the Supreme Court, and a ruling is pending.

Sub estuary opens in Eagle River

Jody Tuck of Eagle River has opened a new Outback's Classic Subz restaurant franchise at the Carrs mall in Eagle River, the company announced. Along with subs, the shop sells salads, soups, drinks and desserts.

Hours are 10:30 a.m. to 9 p.m. Monday through Saturday, noon to 8 p.m. Sunday. Customers can take out or eat in the restaurant. They can phone pickup orders to 907-422-1010 or fax them to 907-422-1012. Quilroy's also caters box lunches and makes several foot-long subs.

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Commercial Fishing
Pacific Surimi pleads no contest to felony charge; agrees to reimburse fishermen

By Associated Press

Aug. 8 2002 • **WorldCatcher Wins** • A Wampanoag, Ore., seafood company pleaded no contest to a felony theft charge Tuesday and agreed to reimburse boat owners and the state just under a half a million dollars in a dispute over payments for

Seattle Summit, co-owned by Noyo Incorporated of Japan and Pacific Redwood Group, agreed to pay Subarus \$187,000 for shoring them on payments for shilling delivered to the plant.

The company has disputed the charges for two years, but today announced it agreed to take responsibility. It says it misinterpreted state rules.

Officials say they agreed not to seek additional penalties after the company donated \$225,000 to a newly created "Clatsop County Endowment Fund" which will be administered by the Oregon Community Foundation, as well as \$20,000 to the Oregon Wildlife Heritage Foundation's "Catch a Poacher" program.

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The Wave - Powered by WaveCast

The Marketplace

Who gets hurt by cheap imports/processors or fishermen? So who should share in the tariffs collected?

By Dan McGonigal



Aug. 7 2002 • WorldCatch Wins - Here's where professional measures come back to bite the seafood industry in the behind: Crayfish processors in Louisiana were awarded \$3 million in tariff money last

Academics crawlfishermen who have been taking the same market briefing from two-pined Chinese imported tal meat as domestic processors wanted to know why they're not getting a share of money based on best of the industry.

They weren't entirely satisfied after a pair of trade law attorneys explained that since the tariff on crawfish was brought specifically on behalf of processors, only processors could receive a slice of the money collected.

Many were especially unhappy to hear that even processors who were not among the 23 that filed the 1996 anti-dumping petition had led to the tariff on sets of the money collected.

So much for the little guy—

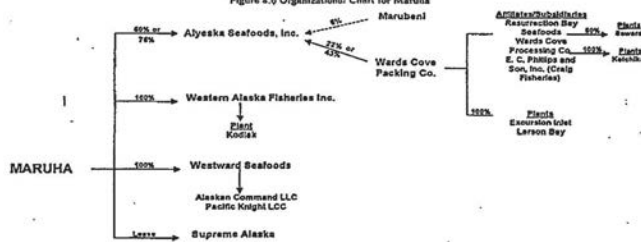
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<p>ADN Archives</p> <p>Anchorage Daily News</p> <p>Saturday, June 01, 2002</p> <p>Section: Nation</p> <p>Editor: Final</p> <p>Page: A1</p> <p>Court ruling revives salmon price-fixing lawsuit</p> <p>By Allen Baker, The Associated Press</p> <p>The Alaska Superior Court has ruled in a class action lawsuit by Bristol Bay salmon fishermen who accuse processors and buyers of conspiring to fix prices in the world's largest salmon fishery.</p> <p>The court Friday overturned a 1999 summary judgment ruling by Superior Court Judge Peter A. Michalski in favor of the defendant companies.</p> <p>That doesn't mean the higher court decided the fishermen deserve to win their case, simply that there are issues that should be decided by a jury, not simply ruled on by a judge.</p> <p>Six lawyers for the fishermen pushed the decision.</p> <p>"The million-dollar Japanese corporations and Seattle-based processors should now face an Alaska jury on charges of conspiracy to fix, manipulate and depress salmon prices," said Philip Winkler, lead counsel for the roughly 1,000 salmon fishermen.</p> <p>The lawsuit was filed in 1995, when the salmon market was far different from the low-price environment today in the wake of the explosion of salmon farming around the world.</p> <p>Fishery's 16-page opinion, written by Chief Justice David Fiske, devotes about 25 of those pages to detailing the overall system of fish buying in Bristol Bay and the plaintiffs' evidence that the companies might have been colluding to keep prices low in the early 1990s.</p> <p>The court then concludes there's enough evidence of possible anticompetitive practices that the case should go to trial.</p> <p>For example, the court said the plaintiffs' lawyers had submitted evidence that "tends to show that defendant processors and importers collaborated to exert pressure on smaller processors and importers who offered higher prices and threatened the stability of the lower prevailing market prices in Bristol Bay."</p> <p>The court ruled that a plaintiff in an antitrust case "may support his case solely with circumstantial evidence." But the plaintiffs do need to show more than simply a pattern of similar conduct by the companies.</p> <p>However, the court said, "because much of the plaintiffs' evidence in this case tends to exclude the possibility of independent action, we reverse the grant of summary judgment."</p> <p>The fishermen sought \$200 million in actual damages and \$1 billion in punitive damages when the case was filed seven years ago.</p> <p>In a footnote to the main ruling in the case, the state's highest court said that the fishermen couldn't claim damages beyond the normal four-year statute of limitations just because the possible antitrust violations amounted to a continuing pattern of conduct that extended beyond that period.</p> <p>"That does reduce the exposure [potential damages] somewhat," said Winkler, the fishermen's lead lawyer.</p> <p>"But there's still very, very significant exposure."</p> <p>Since the case was filed three dozen mostly minor defendants settled out of court for about \$15 million, a sum that will remain in an income account until the case is resolved, Winkler said.</p> <p>But most of the big names — among them Wards Cove Packing Co., Trident Seafoods, Peter Pan Seafoods, and Umanis Inc. — chose to fight.</p>		<p>Chief Justice Fiske heard the case along with Justices Warren W. Matthews and Alexander O. Byrnes.</p> <p>Justice Robert L. Eganoff and Judge C. Carpenter did not participate.</p> <p>© Copyright 1995-2002 - Anchorage Daily News.</p> <p>All Rights Reserved. Reproduction of this article in any form without expressed written consent of the Anchorage Daily News is prohibited. For more information see our DMCA Statement.</p> <p>This site was developed, set up and maintained by John Davidson Systems LLC, a company specializing in Internet, Database, GIS, and CAD technologies. All article contents are copyrighted by the Anchorage Daily News. Please refer to our User Agreement for more info.</p>	

The attached Organizational Chart, prepared by the North Pacific Fishery Management Council as part of its assessment of impacts of the American Fisheries Act, shows foreign ownership of the majority of crab processors who stand to directly benefit from the proposed "two pit" crab allocation plan. It is important that you understand the independent vessel operations or harvesters are governed by the Maritime Administration of the Federal Government ("Marine") and those crab fishing vessels must meet strict U.S. ownership requirements.

While the independent vessels must show 75% ownership by U.S. Citizens, there are no such ownership requirements for the processing companies, many of which are foreign owned. The proposed plan will have the public Sea Crab Allocation plan is ultimately vested in all the public Sea Crab fishing vessels. Being Sea crab resource to the processors, many of which are foreign owned and/or controlled.

Figure 2.6 Organizational Chart for Maruha

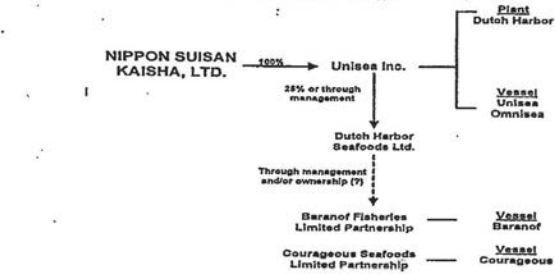


Notes:

- (1) State of Alaska corporate records indicate Maruha owns 76% of Alyeska and Wards Cove Packing Co. owns 27% of Alyeska. Dun and Bradstreet reports state that Maruha owns 80% and Wards Cove owns 43%.
- (2) Dun and Bradstreet report dated August 11, 1998 indicates 9% of Alyeska capital stock is owned by Maruha Corporation and 1% by Western Alaska Fisheries Inc.
- (3) Dun and Bradstreet reported that Maruha had majority ownership in Alaskan Command.

Sources: Ingens Database of Alaska Corporation records; State of Washington Corporation records; Dun and Bradstreet, Inc.

Figure 2.6 Organizational Chart for Nippon Suisan Kaisha, Ltd.



Notes:
 1) State of Alaska corporation records show Richard G. White as President and a 20% owner in Dutch Harbor Seafoods. Mr. White is also listed as a partner in the Baranof and Courageous Partnerships although Washington state records do not show level of ownership.
 2) According to industry sources, Richard Pease is a limited partner in the Baranof and Courageous Partnerships and according to the State of Washington records, Judith V. Pease, his wife, is a partner in the Baranof and Courageous Partnerships. Mr. Pease was a previous president of Unisea, Inc.
 3) Aaron Gilman and Bert Gilman started Universal Seafoods in 1974 and later sold that business to NSK. The Gilmans are both listed as partners in the Baranof and Courageous Partnerships.

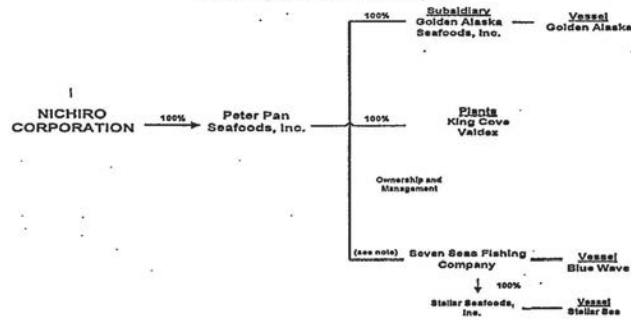
Sources: Ingens Database of Alaska Corporation records; State of Washington Corporation records; Dun and Bradstreet, Inc.

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May 1999

Figure 2.7 Organizational Chart for Nichiro Corporation



Notes:
 1) State of Alaska corporation records for Seven Seas Fishing Company show Barry Collier, President of Peter Pan Seafoods with 75% of capital stock.
 2) State of Alaska corporation records for Stellar Seafoods show 10% and Nichiro Corporation has 10%.

Sources: Ingens Database of Alaska Corporation records; State of Washington Corporation records; Dun and Bradstreet, Inc.

HS1221UDOCJune1999Pafsa

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May 1999

NO "TWO PIE" CRAB RATIONALIZATION

We, the undersigned citizens of the State of Washington, urge our elected officials to oppose the proposed "two pla" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab reauthorization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

[illegible]

The attached petitions represent copies of actual petitions that we maintain in our offices at 1532 NW 56 St., Seattle, WA 98107.

We will continue to supplement these petitions as we encounter more U.S. Citizens who share our concern for fairness and justice and oppose the proposed "Two pier" Bering Sea Crab Rationalization Plan.

If there are any questions as to the validity of these petitions, we welcome any representative of your office to personally inspect the petitions. Please contact us for more information - 206/283-1137, Monday through Friday, 8:30 am to 5:00 pm. Thank you.

NO "TWO PIE" CRAB RATIONALIZATION

We, the undersigned citizens of the State of Washington, urge our elected officials to oppose the proposed "two pie" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/corral afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are actively economically depressed, granting the processors credits over their crab, or penalizes this depressed debt. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pot" system are bad for America. We urge you to help stop the proposed "two pot" crab rationalization plan. Do not allow Congress to invade working in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

[illegible]

We, the undersigned citizens of the State of Washington, urge our elected officials to oppose the proposed "two pie" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing activity in the Bering Sea belongs to the independent fishermen who harvested this crab, not the processors. The processors actively control the fishery without the help of this "two pile" system. With the added power/capacity afforded by the "two pile" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed, granting the processors control over the crab, or perpetuates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopoles such as the one being proposed in this "two pot" system are bad for America. We urge you to help stop this proposed "two pot" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill, that allocates crab rights to processors.

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FISHERMEN'S FINEST, INC.
Seattle, WA, September 6, 2002

Via 1st Class Mail

Re; Bering Sea Crab Rationalization

With reference to my previous letter faxed and mailed to you late last month, I am writing to follow up with additional signed petitions opposing the proposed "two pie" crab rationalization plan proposed by the North Pacific Fishery Management Council that would grant "processor shares" in the Bering Sea crab fishery.

If by chance you have not seen this previous letter, I will provide a brief overview of my opposition to this proposed plan. I am writing to you as CEO of Fishermen's Finest, Inc., an independent, wholly U.S. owned fishing company located in Seattle, Washington. I am also writing on behalf of the many who share my concerns and oppose the North Pacific Fishery Management Council's proposed Bering Sea Crab Rationalization Plan; a plan that endorses "processor shares."

We have gathered in excess of 500 signatures of U.S. Citizens who share our concern for fairness and justice and oppose the proposed "two pie" Bering Sea Crab Rationalization Plan. We will continue to bring this issue to light with the public, as awarding the processing sector with an antitrust exemption through "processor shares" is wrong. Monopolies are bad for America, especially when they involve our natural resources. This plan, if enacted as proposed would grant exclusive access to a select few processors at the expense of the small independent fishermen/businesses of this country; this is wrong.

I offer the following reasons to oppose the "two pie" Bering Sea Crab Rationalization Plan:

- This type of rationalization of our public natural resources has been rejected by all other Fishery Management Councils across the country.
- The processing sector already has the upper hand financially and politically and the small independent financially depressed harvesters have no organized defense.
- Support of the "two pie" system will give even more control of this fishery to the processors and ultimately will hurt the harvesters even more.
- Processor shares equate to a virtual monopoly for the processing sector.
- A majority of the crab processing companies are foreign owned/controlled while the Independent harvesters must meet Maritime Administration required 75 percent U.S. ownership.

Please do not allow Congress to include wording in the Magnuson-Stevens Act Reauthorization, or in any other Bill, appropriations or otherwise, that allocates crab rights to processors. Concerned U.S. citizens have signed the enclosed petitions opposing "processor shares" and we are continuing to gather more signatures. I would welcome the opportunity to talk with you and discuss this important issue in more detail should you need any additional information. Thank you for your consideration.

Sincerely,

RUDY A. PETERSEN

Enclosures: Over 500 Signed Petitions against "processor shares/two pie"

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates the depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

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We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pile" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery; a virtual monopoly.

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Printed Name

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Address - City, State

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Signature	Printed Name	Address - City, State
	Willie E. Smith	2003 28th St. W. Edmonds, WA 98026
	Marka Ebert	1001 1st Ave. W. Everett, WA 98147
	Marka Ebert	1001 1st Ave. W. Everett, WA 98147
	Marka Ebert	1001 1st Ave. W. Everett, WA 98147
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[illegible]

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Crab fishing history in the Bering Sea belongs to the Independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fisherman, most of whom are based in the State of Washington, are already economically depressed, granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose valuable bargaining power that they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab, lobster to processors.

[illegible]

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two plan" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two plan" system. With the added power/control afforded by the "two plan" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to one of the certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever benefits they once had.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fishery Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

[illegible]

NO "TWO PIE" CRAB RATIONALIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pie" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two-ple" system. With the added power/control afforded by the "two ple" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

[illegible]

NO "TWO PIE" CRAB RATIONALIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two plan" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pla" system. With the added powerfostered afforded by the "two pla" system, the processors will have total unequivocal control of the Bering Sea crab fishery; a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed, granting the processors control over the crab, only to perpetuate this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

Project Name	Address - City - State
Bounce Boat	441 E. Emma St. Seattle WA
Paul Gilliland	411 W. Taylor St. Seattle WA
Susan Boush	1034 1st Ave. 12 km. 9003
Julie K. Lee	14429 E. 27th St. Redmond WA 98073
Chet Morrison	326 S. Maple St. Seattle WA 98104
Harriet Brown	514 Prospect St. Seattle WA 98107
Joe & Janet	820 University St. Seattle WA 98101
Alfred Long	674 24th St. SE. Bremerton WA 98310

NO "TWO PIE" CRAB RATIONALIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two plus" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total, unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose their independence and become even more dependent on the processors.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill

[illegible]

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pile" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pile" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pla" system. With the added power/control afforded by the "two pla" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fisherman, most of whom are based in the State of Washington, are already economically depressed, granting the processors control over the crab, only exacerbates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

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NO "TWO PIE" CRAB RATIONALIZATION

W/a, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pile" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery: a virtual monopoly.

The Independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only to perpetuate this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

[illegible]

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequal control of the Bering Sea crab fishery, a virtual monopoly.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

[illegible]

NO "TWO PIE" CRAB RATIONALIZATION

Crab fishing history in the Beqing Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two ple" system. With the added power/control afforded by the "two ple" system, the processors will have total unequivocal control of the Beqing Sea.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allows crab, lobster, and shrimp rationalization.

[illegible]

NO TWO PIE CRAB RATIONIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pie" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab for their own use. The fishery was a family owned and operated business. With the advent of the proposed "two pie" system, the processors will have total unilateral control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to the processors, the processors will have total unilateral control of the Bering Sea crab fishery, a virtual monopoly.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management Act which would allow for the rationalization, or in any other Appropriations Bill that allocates crab rights to processors.

Signatures: [List of names and addresses, including: Robert H. Smith, 1000 1st Ave, Seattle, WA 98101; John A. Smith, 1000 1st Ave, Seattle, WA 98101; etc.]

NO TWO PIE CRAB RATIONIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pie" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab for their own use. The fishery was a family owned and operated business. With the advent of the proposed "two pie" system, the processors will have total unilateral control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to the processors, the processors will have total unilateral control of the Bering Sea crab fishery, a virtual monopoly.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management Act which would allow for the rationalization, or in any other Appropriations Bill that allocates crab rights to processors.

Signatures: [List of names and addresses, including: Robert H. Smith, 1000 1st Ave, Seattle, WA 98101; John A. Smith, 1000 1st Ave, Seattle, WA 98101; etc.]

NO. TWO PIE CRAB RATIONALIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to support the proposed "two pie" crab rationalization plan.

Crab fishing history in the Bering Sea belongs to the independent fishermen who have fished the crab, not the processors. The processors already control the fishery without the help of the "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed, grinding the processors out of the fishery. Only by granting the processors control of the fishery will the processors be able to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. We urge you to support the proposed "two pie" crab rationalization plan. We urge you to support the proposed "two pie" crab rationalization plan. We urge you to support the proposed "two pie" crab rationalization plan.

Signatures: *[Handwritten signatures]*
 Address - City, State: *[Handwritten addresses]*
 Print Name: *[Handwritten names]*

NO. TWO PIE CRAB RATIONALIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to support the proposed "two pie" crab rationalization plan.

Crab fishing history in the Bering Sea belongs to the independent fishermen who have fished the crab, not the processors. The processors already control the fishery without the help of the "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed, grinding the processors out of the fishery. Only by granting the processors control of the fishery will the processors be able to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. We urge you to support the proposed "two pie" crab rationalization plan. We urge you to support the proposed "two pie" crab rationalization plan. We urge you to support the proposed "two pie" crab rationalization plan.

Signatures: *[Handwritten signatures]*
 Address - City, State: *[Handwritten addresses]*
 Print Name: *[Handwritten names]*

NO "TWO PIE" CRAB RATIONALIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pile" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery; a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

[illegible]

NO "TWO PIE" CRAB RATIONALIZATION

We, the undersigned citizens of the United States of America, urge our elected officials to oppose the proposed "two pie" crab fishery rationalization plan as proposed by the North Pacific Fishery Management Council for the Bering Sea Crab Fishery.

Crab fishing history in the Bering Sea belongs to the independent fishermen who harvested the crab, not the processors. The processors already control the fishery without the help of this "two pie" system. With the added power/control afforded by the "two pie" system, the processors will have total unequivocal control of the Bering Sea crab fishery, a virtual monopoly.

The independent crab fishermen, most of whom are based in the State of Washington, are already economically depressed; granting the processors control over the crab, only perpetuates this depressed state. By requiring the fishermen to deliver their crab to only certain named processors, competition for the crab will diminish as will the fishermen's ability to negotiate effectively with the processors. The fishermen will lose whatever bargaining power they have.

Monopolies such as the one being proposed in this "two pie" system are bad for America. We urge you to help stop this proposed "two pie" crab rationalization plan. Do not allow Congress to include wording in the Magnuson-Stevens Fisheries Management and Conservation Act reauthorization, or in any other Appropriations Bill that allocates crab rights to processors.

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CRAB INDUSTRY BAKES A MONOPOLY PIE

The Alaska crab industry is asking Congress for a law that would grant individual fishing and processing quotas. The fishing quotas, if paid for, may be wise. Processing quotas are monopoly privileges, and should be rejected.

Individual quotas began with halibut. It is a valuable fish, and in the open-access fishery, owners kept piling in boats until the season shrank to a few days. Fishermen stayed awake with pills, they put hooks through their palms, and if there was a storm, sometimes their boats roiled over. Halibut, available in theory for most of the year, entered the market in a flood and were sold to the consumer frozen.

The system was crazy. And so came the idea of setting a quota per boat. That way, a skipper would no longer be in a rush, and would treat nature, his catch and his personal safety with respect. The new system was tried, and all these public benefits were achieved. But there was also a private benefit: the quota shares, provided free to every owner of a halibut boat, were a new asset that could be bought and sold. That meant that owners of unneeded boats could sell their shares and be paid to leave.

Nowhere else in American industry was capital paid to leave. The companies that bought the halibut also had excess investment, and they had to write it off as a loss.

Not any more. The proposed crab plan has quotas for processors,

What is being done here is the creation and division of a pie: The pie does not consist of the crab, which was always there, but the exclusive rights to the crab. It is something like a stock offering, except that the original owner of the shares—the public—is paid nothing. The transaction is political and the public is not represented. The dickering is between the boat owners, the processors, the Alaskan coastal communities and the skippers. All get a share.

The buying and selling of a right to *catch* fish makes a certain amount of sense. Buying and selling a right to *buy* fish is selling a monopoly privilege. It will be remarkable if it is even legal.

To Governor Frank Murkowski, Senator Ted Stevens, Senator Lisa Murkowski, and Congressman Don Young:

[illegible]

[illegible]

FISHERMEN'S FINEST, INC.
Seattle, WA, December 13, 2002

Hon. JOHN MCCAIN
 Washington, DC.

Re: Bering Sea Crab Rationalization

Dear Senator McCain:

With reference to my previous letters faxed and mailed to you earlier this year (copies enclosed for your reference), I am writing to follow up with additional signed petitions opposing the "two pie" crab rationalization plan proposed by the North Pacific Fishery Management Council (NPFM Council) that would grant "processor shares" in the Bering Sea crab fishery.

To date, we have collected in excess of 700 signatures opposing this plan. Many prominent fishermen as well other concerned Americans have signed my petition, for example:

John Boggs of Lynnwood, WA	Richard Hastings of Langley, WA
Stanley Hovik of Edmonds, WA	Karl Hansen of Seattle, WA
David Little of Sammamish, WA	Einar Longesater of Shoreline, WA
Frank O'Hara, Sr. of Rockland, ME	Thomas Parks of Edmonds, WA
Alf Sorvik of Edmonds, WA	Konrad Uri of Seattle, WA

I understand from response to my previous letters that many feel I oppose rationalization of the crab fishery altogether. This is not the case. The fishery can be adequately and fairly rationalized at the independent fishermen's level; it is not necessary to offer processor shares as doing this will equate to a virtual monopoly for the processing sector. In fact, the very antitrust laws of our Country that were put in place to protect our free economy would need to be re-written to allow this type of rationalization of the Bering Sea crab fishery.

In addition to my opposition and that of many other concerned Americans, fishermen and otherwise, I understand the following Alaskan Communities oppose this plan as well: Akutan, Anchor Point, Chignik, Chignik Lagoon, Clam Gulch, Cold Bay, Cooper Landing, False Pass, Homer, Hope, Kachemak Bay, Kasilof, Kenai, King Cove, Kodiak, Moose Pass, Nanwalek, Nelson Lagoon, Nikiski, Ninilchik, Port Graham, Portage, Seldovia, Seward, Soldotna, Sterling, Tyonek, and Whittier.

Please do not allow the NPFM Council to set a precedent for other fisheries in our Country by allowing their "two pie" crab rationalization plan, which would grant "processor shares" in the Bering Sea crab fishery, to move forward either as an amendment to an Appropriations Bill or as part of the Magnuson-Stevens Act Reauthorization. This type of rationalization of our public natural resources has been rejected by all other Fishery Management Councils across the country. If it is wrong for the rest of America, it is wrong for Alaska as well—we, the Independent fishermen, concerned citizens, and Alaskan Communities need your help to stop this plan.

I would welcome the opportunity to talk with you and discuss this important issue in more detail should you need any additional information. Thank you for your consideration.

Sincerely,

RUDY A. PETERSEN

Enclosures: My previous letters dated 8/26/2002 and 9/6/2002
 Signed Petitions against "Processor Shares/Two pie"
 Seattle Times Editorial "Crab Industry Bakes a Monopoly Pie"

FISHERMEN'S FINEST, INC.
Seattle, WA, March 6, 2002

Hon. JOHN MCCAIN, Chairman,
U.S. Senate Committee on Commerce, Science, Transportation,
Washington, DC.

Re: Bering Sea Crab Rationalization

Dear Senator McCain:

With reference to my previous letters faxed and mailed to you last year (copies enclosed via First Class Mail, for your reference), I am writing to urge you to oppose the North Pacific Fishery Management Council's ("NPFMC") proposed "two pie" crab rationalization plan that would grant "processor shares" in the Bering Sea crab fishery.

Please do not allow Congress to allow wording in the Magnuson-Stevens Act Reauthorization, or in any other Bill, appropriations or otherwise, that allocates crab rights to processors. The fishery should be rationalized at the harvester level, as all other fisheries have been rationalized in our Country.

As this is a very important issue that will set a dangerous precedent for the entire Country, should the NPFMC plan be adopted, I will continue to oppose the "two pie" crab rationalization plan for the following reasons:

- Violates Anti-trust.
- Grants the Processing Sector an unfair advantage.
- Contrary to all other Fishery Management Councils' actions.
- Places U.S. natural resources in foreign owned companies control.
- Many Alaskan Communities oppose plan.
- Over 700 concerned citizens have signed my petition opposing plan.
- Sets a dangerous precedent that may be applied in other fisheries.

The Bering Sea crab fishery should be rationalized at the harvester level only because:

- Consistent with all other Fishery Management Councils' actions.
- Provides some protection for the economically depressed crab fishermen.
- Fishing vessels must meet U.S. ownership requirements under MARAD.

Please contact me should you need any additional information regarding this very important issue. Thank you for your consideration.

Sincerely,

RUDY A. PETERSEN

PREPARED STATEMENT OF RON PHILEMONOFF, CHAIRMAN AND CEO,
TANADGUSIX (TDX) CORPORATION OF ST. PAUL ISLAND ALASKA

My name is Ron P. Philemonoff. I am Chairman and Chief Executive Officer of Tanadgusix Corporation, the ANSCA Village Corporation for the Aleut Community of St. Paul Island. St. Paul Island is home to the largest Aleut community in the world, and a focal area for both crab catching and crab processing. We speak in opposition to the plan before your Senate Committee, as it is written and presented.

Our corporation owns 90 percent of the land on St. Paul Island as a result of ANCSA (Alaska Native Claims Settlement Act) entitlements. As the former hunters and processors of the Northern Fur Seal, the Aleut people have inhabited the Pribilof Islands since being forcibly placed on these remote islands prior to the purchase of Alaska by the United States from the Russian Emperor. The Aleuts of the Pribilof Islands harvested and processed fur seals thru the Russian occupation, and under United States oversight until 1984. Our people were wards (some say slaves) of the United States government until fur seal harvesting and the Fur Seal Treaty of 1911 was abolished in 1984 due to national and international environmental politics.

At the time of the cessation of the harvest, St. Paul Aleuts were specifically promised that we would enjoy the fruits of freedom and free enterprise, through the enjoyment of an economy based on the fisheries resources of the Bering Sea. By the providence of nature, more than 75 percent of the fisheries resources of the Bering Sea are located within 200 miles of the Pribilof Islands. With such abundance within close proximity, we were optimistic that an equitable share of those resources would be made available to us to meet the economic needs of the Aleut people of the Pribilof Islands.

In the mid-1980s, TDX began writing to NPFMC and to the government, notifying them that the realization of Aleut dreams and the government promise of economic development would be severely compromised by the heavy capitalization of the fisheries in the Bering Sea, which was proceeding rapidly, supported by government loans and NPFMC policies. We duly registered our serious concerns that our people would be left out of participation, by not having the historical participation so commonly used under fishery management regimes, to qualify corporations and large vessel owners for entitlement to resource rights. Our concerns were largely ignored. By 1989, overcapitalization had created a crisis for government loan portfolios, Seattle corporations and foreign corporations, such that threats to the entire resource were perceived. The inshore/offshore resource split was invoked in 1992, as a means to "rationalize" the groundfish fisheries, because the larger companies were fighting over respective share and threatening the entire resource. In less than a decade, the "rationalization", called inshore/offshore, was converted to a full scale property entitlement to the pollock fishery resource, now enjoyed by the same beneficiaries who were first "rationalized".

Crab Processing North of 56 Degrees. In 1987, while all the furor over groundfish was starting to occur, there were no crab facilities or processing on the Pribilof Islands, nothing North of 56 degrees with exception of floating processors that followed the crab fleet. Harbors promised to us by the government in 1984 had become bogged down in engineering and the politics of contracting and government. Our corporation perceived back then that Aleuts would not get a chance in any fishery if we did not accelerate our participation as a community. TDX thereupon embarked on a program to convert port proximate properties on St. Paul Island to participate in the crab fisheries. The heyday of Bering Sea King crab fishing had occurred in the 1970s and early 1980s, and our people had watched helplessly from the shore as hundreds of vessels, foreign and domestic, lighted our islands from offshore, using our island as a lee in the Bering Sea wind, working and exploiting the crab resource off our shores. We were determined by the late 1980s to mount participation in the crab fisheries, for the economic good of the Aleuts.

With our own entitlement and settlement funds, and with the help of a willing Japanese entrepreneur, TDX cleared and refitted an abandoned fur seal processing facility, converting it to crab processing facilities. While the government sponsored breakwater and harbor facilities on St. Paul Island were barely functional, TDX Corporation spent millions of dollars to build a 300 foot ocean dock and to dredge immediate proximate tidelands areas so that we could invite into St. Paul, the Bering Sea crab fleet and process their product. By 1992, about the time the inshore/offshore debate had reached its height, we had succeeded in cornering about 25 percent of the Bering Sea crab resource, purchased and processed right on St. Paul Island. We planned and developed a new shoreside processing facility that is now the largest crab processing facility in the world. Use of that facility was ultimately pur-

chased from our partner in 1993 by Trident Seafoods, a member of the pollock and salmon clubs, and the major processor of crab in the Bering Sea.

While TDX and Aleuts may have been inexperienced in fisheries and the politics of NPFMC in the 1980s, we suffer from no current illusions regarding what “rationalization” is all about, and what it means: *resource entitlement and property rights*. Our opposition to this plan is based on the fact that our corporation and our shareholders, as pioneer investors and venture capitalists of processing North of 56 degrees, to the tune of over \$15.0 million, have been left out of this rationalization plan, which has, as a key component and foundation of its rationale for processor quota, a rewarding of investments made to support the crab industry, with quota property rights. If investments in the industry are going to be considered as a rationale for distributing crab processing rights into private ownership, all in the name of “rationalization”, then we respectfully request that our investment also be rationally considered as a basis for Processor property right PQS for TDX. We own the dock, the plant, the land and the tidelands leases upon which the processing infrastructure for both Trident and Icicle sits. We view such a settlement that does not include TDX, as both unfair and inequitable, and a severe injustice to the Aleut people.

We assert that any assessment of NPFMC and the State of Alaska that Aleut needs are served by Community Development Quota participation in this plan, is a flawed and technically deficient analysis, that disenfranchises both TDX Corporation and its shareholders, as major equity investors in crab processing North of 56 degrees, from rightful participation in full and equitable sharing of this proposed resource distribution. We cannot support, and must vigorously object to this plan as a matter of simple fairness and justice.

We should clarify these statements. TDX Corporation does not blame participant processors for seeking a share of Bering Sea resources. We do not claim that we are solely deserving of resource entitlement, any more or less than any deserving vessel owner who annually risked life and limb to participate in these dangerous crab fisheries. Trident Corporation and Icicle Seafoods, both current St. Paul Island tenants of TDX Corporation, are responsible and reliable tenants, as well as owners of catcher vessels. But their rights in this plan to crab processor quota rights, north of 56 degrees, derives from use of TDX property, TDX dredged tidelands, and TDX facilities on St. Paul Island, which were developed with corporate resources of Tanadgusix Aleut shareholders, unacknowledged, unrewarded and inequitably excluded from participation in this plan of distribution.

There are so-called “community protection clauses” in this plan which will be lauded as preserving and meeting Aleut interests on St. Paul Island. In fact, they are last minute adaptations to the growing awareness that community and regional protections in the plan, are filled with loopholes: loopholes that exempt bairdi crab from the program, that allow PQS to be leased to floaters, that allow PQS to be used within the same company outside of so-called regions, sold to other companies, and sold for custom processing. These are ambiguous and smoky illusions which will assure that community protections will be fish planned out of existence, in the name of “fisheries efficiency”. We repeat our contention that, if allocations are going to be made based on investments in our St. Paul Island community, those allocations should go to those who made the investments, not in the form of a nebulous first right of refusal to a CDQ group that has not invested the first dime in crab processing on St. Paul Island, and that is consumed with political posturing and bureaucratic dithering. Aleut survival is much too important to base our community participation on such a wobbly foundation.

Our request for equity PQS recognizing the TDX investment has been made at the last two NPFMC meetings, and has been totally ignored. Specifically, TDX requested before the NPFMC that its original investment in the Anderson Plant be recognized by an 8 percent allocation of the Bering Sea crab PQS, all species, recognizing the investments and levels of processing achieved by TDX St. Paul prior to there ever being either Trident or Icicle or Unisea in the community, or processing in St. George for that matter. TDX went on to say that if there is to be no allocation for its investment, then the PQS assigned to and derived from processing at our plants and facilities on our lands and leased tidelands, needs to be tied permanently and inseparably to those facilities.

Honestly speaking, the crab “rationalization” plan is a self-serving resource entitlement plan concocted under a democratic veil at NPFMC, by an already well vested group of influential large fishery resource owning companies, whose own interests already include a substantial portion of the crab catching industry, and the Bering Sea pollock resource. These companies held the independent crab fishermen and crab vessel owners hostage to the threat, that any rationalization or IFQ program in crab was dead on arrival, due to their substantial political influence, unless

processor quota share was included. The losers here are small businessmen, small processors, individual vessel owners, smaller vessel participants, Alaskans, and Bering Sea Aleuts. This program should not be confused with or compared to the Halibut/Sablefish IFQ program, as a rational panacea to "too many vessels chasing too few fish". We repeat again our request that NPFMC reexamine the history of crab processing development and participation north of 56 degrees, and implement more equitable distributions if such distributions are to be invoked in the name of rationality.

We speak in frustration. This plan is an unfair vesting of resources to which Aleuts residents of the Bering Sea, if anyone, should be given priority access. Unless and until direct and unambiguous protections are provided for communities north of 56, free of loopholes, and unless and until, the investments of Alaskans into the industry are considered on an equal par with the investments of large non-resident corporations, we must strongly request that you withdraw any support of the crab rationalization in its current form. We cannot support processor quotas being distributed when the chance exists, multiple avenues, that those quotas will leave the island, for the sake of processor convenience or fishing efficiency.

TDX has earned the rights to participation with our investments. We request that Congress look into these questions, and request the National Marine Fisheries Service or the NPFMC to document and support our historical participation and investment in crab fisheries north of 56 degrees. If our equity cannot be recognized, then we ask you to send the NPFMC back to the drawing board for development of a crab distribution plan that doesn't disenfranchise legitimate ground investments, and market freedom for long time fishermen, by distributing property rights to the few processors still standing in the game. Rationalizing the fishery has never been explained as taking all risk out of the fishing business, in the name of supporting a few remaining processors.

Tanadgusix Corporation urges the respected Senators of the Commerce Committee to dump this badly flawed plan that disenfranchises and gives no credence to, the true and verifiable investment and equity of the Aleut people of St. Paul Island in the crab industry. Or to make sure that it does so, before authorizing another distribution of public resource to large industry, without considering the needs of those who live in the middle of the resource.

Respectfully Submitted,

RON P. PHILEMONOFF,
Chairman and CEO,
Tanadgusix Corporation.

PREPARED STATEMENT OF BYRON L. PIERCE

Dear Senators,

My name is Byron L. Pierce. I am a 53 year old Ex-Marine and Vietnam Vet. Both my older brothers were Marines. My middle brother lost his life in Vietnam. After my tour of duty I returned to my home in Oregon and attended college for a few years. I felt my life wasn't quite right and felt I needed more so I headed north and ended up on the most beautiful Island, Kodiak Island in Alaska.

It was shortly after arriving here I had a chance to go King Crab fishing in Kodiak. I immediately fell in love with crab fishing and decided then and there that this is what I wanted to do with my life. Every aspect of the crab fishing business intrigued me. It is man against the sea and his ability to overcome tremendous odds while working exceptionally hard and hoping to come home with a good payday, and then doing it again and again. That was 30 years ago.

In my career, I have owned three crab boats. I started with a small boat and over the years have upgraded to larger boats. I have lost many close friends over the years and in 1993 my family and I lost 3 crewmen when our crab boat Massacre Bay sank. We currently own 1 boat now, the Nuka Island, and are a family owned business. I have literally given my heart and soul to the crab industry in Alaska for 30 years.

I have watched the crab industry change drastically over the years and now we are down to Rationalization, which I believe is needed!

Senators, the big issue is the whole concept of Processor Quotas and the changing of the Anti-Trust laws to allow them. The concept of Processor Quotas tells me I have to deliver to just certain processors, and just take what price they choose to pay me for my crab. To me this is crazy!! It's like telling a chicken farmer he can only sell to certain markets. This is totally Un American to me!!

The only people Processor Quotas are good for are Processors. To change the Anti-Trust laws on order to get this accomplished is just plain wrong!

Senator, please don't tell me that this is what I went to war for or that this is what my brother lost his life for!

In the early 90s, an Individual Quota Program (IFQs) was put in place for Alaskan halibut and sable fish fisheries that has proven to work well. I feel strongly that this same program would work perfectly for our crab fishery to the men that earned them. The fishermen, Not the processors.

Again, please vote this down and vote Not to change the Anti-Trust Laws.

Sincerely,

BYRON L. PIERCE,
Crab Fisherman,
Kodiak, Alaska.

PREPARED STATEMENT OF RICHARD POWELL

Mr. Chairman, my name is Richard Powell and I have been a resident of Kodiak, Alaska for 39 years and have been involved in the Alaskan king crab fisheries for that entire time.

I would like to thank you for the opportunity to submit written comments before the Senate Commerce Committee regarding the issue of rationalization of the Bering Sea/Aleutian Islands crab fisheries. My specific comments will be in relation to the proposed element of individual processing quota (processing shares).

I would like to provide a bit of history on how I perceive this issue has evolved over the last several years. The crab industry has been through a difficult time in the last several years, with the severe downturn of the red king crab and opilio crab stocks of the Bering Sea. The fishing industry has been working for years to attempt to develop an industry-funded buyback program. This, coupled with a license limitation program designed to only allow recent participants to remain in the fishery, can provide some short-term relief to the fleet.

However, it is apparent that this fishery needs a quota based program, to allow individual harvesters the ability to determine when their fishery will occur. As you are aware, the job of fishing crab in the Bering Sea is the most dangerous occupation in the United States. In recognizing this, crab harvesters have worked for over four years in attempting to create a quota based program, which will lead to a much safer fishery, as shown by the results of the halibut IFQ program in Alaska.

The processing sector in Alaska is a combination of U.S. and foreign owned companies. These companies have a strong lobby and work closely together to achieve their goals. When the issue of crab rationalization began to be discussed amongst the harvesters, the processors formed a coalition and began working as a unit to achieve their goal. My view of this goal is that the processors want to make sure to control the fleet as much as possible, in regard to time and location for delivery, as well as the pricing structure. This benefits companies who are diversified in their processing products, and want to create efficiencies for themselves.

In order to achieve this goal, they determined that the only solution to their concerns would be processing shares. They needed to begin with a limited entry system of their own to create a pool of eligible processors. But this wouldn't be enough. They determined that they didn't even want to compete between themselves for the product. The answer was, of course, guaranteed deliveries based on their previous processing history. The processors discussed this with each other and determined that they would only agree to a minimum of 90 percent guaranteed deliveries. They further agreed that this was the only solution and that no other would be acceptable. This created a very uncomfortable situation for the negotiators of the crab rationalization committee, which worked for over a year to try and determine elements and options for the Council's analysis.

Other options were presented and repeatedly rejected. In fact, the processing sector representatives went so far as to say that if they didn't get their way, they would block the buyback program (which is still in OMB limbo), as well as stop any rationalization program from being implemented in the crab fishery. The processing lobby is powerful and well-funded. The results are that we are in this dilemma.

The North Pacific Council, just one year ago, voted 11-0 to send their required report to Congress, along with the preferred alternative. The preferred alternative included the 90 percent guaranteed delivery requirement to eligible processors, as they intended. While the Council debated and voted many times over a period of days on the harvester elements of the program, there was no single vote on the policy of granting processor shares. It was simply included as part of a many-page motion. It was not amended or discussed, but simply approved in the final package.

The Council made it clear that the cornerstones to this program were the binding arbitration and community protection portions of the plan. These elements were to be followed as “trailing amendments”, with their own committees and analytical documents. This past month, the Council saw the final documents and reports on the “cornerstones” of the crab plan. They were barely able to get a majority to approve them. It is clear that with closer scrutiny, the Council’s preferred alternative in June 2002, has serious problems.

The entire issue of processing shares was discussed briefly by the National Academy of Sciences and the concept was rejected as unnecessary. The Committee was not convinced that processors should be granted processing shares, or even if they should be granted harvesting shares for eligible vessels they might own.

I am frankly surprised that this issue has continued to receive serious consideration. It proves to me that the processor lobby is as strong as it was before Alaska became a state and they controlled the seafood industry through the salmon traps. Their successful lobby resulted in Alaska remaining a territory for years after it should have become a state. The fishermen cannot hope to compete with the power and funding of this group. We can only hope that our elected representatives will continue to use good judgment and reject this proposal. This is not fishery management, it is fishermen management.

As a crab vessel owner who has a catcher vessel and a catcher/processing vessel, I have in years past delivered some of my crab from the catcher vessel to processors and some of my crab, I have processed myself with my catcher/processor. Under the processing share proposal, I will not have the option in the future to process my own crab from my catcher vessel. Now, the last time I checked, this was still America and I had some freedoms to buy or sell as I choose. I shouldn’t be forced to sell my crab to a specific, eligible processor, just like they shouldn’t be forced to sell the processed product to a specific store or wholesaler. But, this is what is being proposed. It just doesn’t make sense.

I have every confidence that Congress will carefully evaluate this issue on the merits, not the political push and pull that a well-funded lobby can accomplish. There is a reason that we have anti-trust laws, let’s not overturn them on a whim. It is vital that the Bering Sea/Aleutian Islands crab fisheries be rationalized and a quota based program be implemented. It is not right that a few powerful companies can stop this from happening unless they get their own guaranteed lock on the product.

Thank you for considering my comments.

PREPARED STATEMENT OF ROBERT E. PRIES

“Crab Rationalization” is nothing less than a legalized cartel. The fishermen have no choice but to sell to the cartel regardless of how low the price or they do not sell at all. Even if a portion of the catch is reserved for free market the results will be the same: the free buyer could not compete with the cartel if the cost of his fish was more than the cartel. If 20 percent of the catch was reserved for the free market then only 80 percent of the fishery will be dominated by small group of monopolies. What a deal.

I am not a crab boat owner in this particular fishery but I do participate in crab and numerous other fisheries. We are shaking in our boots because we see this plague engulfing the entire fishing business. Processors everywhere are salivating at the prospect.

The fishermen are not getting a fair shake as it is and this would only make it permanent and legally condemn us to the lowest rung of the economic ladder. That is not fair for men who work some pretty mean hours, live in some pretty Spartan conditions in the most dangerous occupation in the country.

Ever since Exxon Valdez Oil Spill it has been bad news for nearly all of the fishermen in Alaska, even those who were not directly affected by the spill. That was a 9.0 disaster on the Richter Scale for a lot of fishermen who still have not been compensated not to mention those who never will which may include nearly all of us if it grinds along for another 15 years.

We have more Pink Salmon than our processors seem to want but do you think Alaska will allow foreign processor vessels into our fisheries? Think again. It is all about protecting the soft money contributors.

Senator McCain, I was a dedicated supporter of your bid for the Presidency mostly because of your fight for campaign reform. I believe that that this legalized bribery system of ours is the root of corruption in this country. It sets a bad example for the leaders of the country who have not already been corrupted and may be the best example of the trickle down theory yet.

I cringe when I hear our President talk about spreading democracy. Make no mistake we are governed by a Plutocracy. The ratio of CEO to worker compensation increasing from 400–1 to 4,000–1 during the past 20 years should convince anyone that this country is more and more being run by the wealthy for the benefit of the wealthy. Those CEO's make those fantastic salaries even when their Companies are failing.

I served my country just like you Senator McCain. I was a Navy fighter pilot too and I am not blind nor am I deaf. I hear Perot's sucking sound. I see that the law is for the highest bidder. I see antitrust as a bad joke. I see outright white collar criminals all over. The politicians revolving door . . . and greed heads everywhere. I think that we may be in bad trouble. I don't think it was always like this. We are in dire need of truth, honesty, integrity all over this country.

The only hope for the boat owners and crews is for a free market. WE only ask for a fair price for our catch something we will never see under this scheme which was contrived by a processor and his favorite politician. Best I can tell this processor has become very wealthy while his boat owners barely got by if they did and the crews were asked to live on a pitiful wage.

Please look past the attempt to cloak this greed under a respectable name like "Rationalization". The Processors want a shoe in deal and my 25 years experience with them tells me that they will be just as greedy as Enron. Each one of these processors want their own monopoly and nothing less. Free market used to be the mantra of our economy playing field this "Rationalization" couldn't be further from a level playing field in a free market.

The proper name is CRAB ABOMINATION.

PREPARED STATEMENT OF DAVID SOMA,
DEEP SEA FISHERMEN'S UNION OF THE PACIFIC

The Deep Sea Fishermen's Union of the Pacific (DSFU), a labor organization that has represented working fishermen for 90 years, is grateful for the opportunity to provide a statement for the record of this hearing on the Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Plan (Plan). The long history of DSFU has been marked by a clear vision for the longline halibut and sablefish fishery, a progressive outlook for the industry, an emphasis on safety and the immense professionalism of its members. DSFU is justifiably proud of its unbroken service to working fishermen. The Union has amassed an unparalleled string of successes in safety, fishing management, conservation and equitable treatment for our members throughout our history.

The almost 300 current members of the Union represent a growing number of the longline schooner fleet crewmen and an even faster growing number of crab fishermen from Washington and Alaska.

The Union was formed, when the crews were confronted by extremely low prices for halibut, poor resource conditions, and fishing in very bad weather and unsafe conditions that led to several vessels sinking and the loss of several crewmen. The time was right to take some action. They created the Union with goals that were straight-forward and practical; fair wages, better living conditions, improved benefits, and a closed shop.

As working partners in fishing operations, the members of the DSFU took responsibility for the management and well being of their livelihoods. The Union's principles continue to be: The proper long-term management of resources for conservation and efficiency; the fair and straightforward treatment of vessel, skipper and crew; professional work standards; and the integrity of fishermen to stand together.

After a turbulent beginning with the Fishing Vessel Owner's Association (FVOA), initial differences were settled and the two organizations established a simple, elegant and precise contract, now known as the Set Line Agreement. It became the basis for payment and working conditions for all longline fishermen, Union or otherwise, working from the mouth of the Columbia to the Bering Sea.

Relations between these two organizations have been candid and collegial ever since. There were many good reasons for the Union and FVOA to cooperate and collaborate. Many captains, boat owners and crewmen realized that their goals were inextricably linked. It was rapidly apparent that there were a sizeable number of key issues that would need the full cooperation and lobbying power of both the Union and management.

In 1962, the North Pacific Fisheries Commission ruled that the Bering Sea halibut stocks were underutilized. They then became fair game for the Japanese. American fishermen strongly objected, but to no avail, and the decision negatively impacted every American fishermen working in the North Pacific. From 1966–1974,

the halibut quota dropped precipitously. Longlining reached its lowest point in 1974 with just over 21 million pounds caught for the entire year. Trips took 20–25 days—fish were old when delivered and “hole” trips (ones that made no money) were common.

In the Senate, Senator Warren Magnuson from Washington State and Senator Ted Stevens stepped up to the plate. Under their leadership, the foundation was laid for the Americanization of the fisheries within 200 miles of our coasts.

However, a race ensued among American fishermen, as the domestic fleets grew in size and efficiency. For halibut, openings grew shorter. In 1980, area three was open for eight days and by 1983 it was five. Crew fitness and endurance became increasingly important. The Union grew with young men who were drawn by the reputation of the schooners and the Union’s professionalism. An old sideline, black cod, increasingly became a mainstay of the longline fleet.

FVOA and DSFU worked together to stop the inequities involved in fishing for black cod. All hook and line fishermen in the North Pacific again benefited from the effort.

By 1991, fishing time for both black cod and halibut had shrunk to a scant number of days. The Union entered into a dialogue with FVOA about a plan centered on Individual Fishing Quotas (IFQs). After lengthy discussion and lots of effort over a period of seven years, IFQs were adopted for the halibut and sablefish (blackcod) fisheries. The decision was not an easy one. The prime-mover for this process was the North Pacific Fishery Management Council, which began considering options in the late 1970s. Dangerous “derby” fisheries that caused safety, care of gear and quality of product issues were resolved by IFQ’s.

The Set-Line Agreement was renegotiated between the Union and FVOA in 2002, again demonstrating its utility and the ability to stand the test of time.

DSFU continues to set the standard for longlining in the North Pacific. The Union has unhesitatingly stepped up as a key part of the most powerful lobbying body for hook and line operations in the North Pacific. The recent addition of a growing number of crab crewmen and skippers to its ranks is a testimonial to the worth, stability and advocacy for working fishermen DSFU has always demonstrated. From dories to schooners, from lay-up to IFQ—the Union has really been about people—its incredible membership.

Background and Need

Owners of the crab boats operating in Alaska, most of which are based in Seattle, have been struggling for a decade to stay solvent despite plunging populations of most crab species. In September 2002 the National Marine Fisheries Service (NMFS) and the Alaska Department of Fish and Game made the situation even more critical when they announced that the allowable catch for snow crab, the most populous species, was lowered for the 2003 season. This was a 15 percent decrease from the 2002 catch. Without enabling legislation from Congress, the fishery will continue to operate under the Olympic quota system. The Olympic system forces boats to race for the fish, usually resulting in uneconomical marathon fishing sessions that are damaging to the crab stocks and dangerous to crews. This system is the main reason crabbing is considered the most dangerous fishery in the United States.

The proposed alternative, a quota allocation system, would give catchers, processors, communities and skippers specific quotas of the available catch. Under the system, quota owners will be able to catch crab according to market and weather conditions and their own best operating efficiencies as opposed to the dangerous and inefficient “derby” system.

Versions of the quota allocation system have been implemented by the halibut, pollack and whiting fisheries, all with positive results. The Pacific halibut fishery, once poorly controlled and managed, is now considered well-managed, environmentally responsible and sustainable for the foreseeable future. The fishery currently fishes 20 percent of the available biomass while providing good wages for the crewmen and a profitable business for the owners. In addition, the fishery has seen a marked decrease in accidents and deaths since rationalization. In a recent Seattle Times article, both Pacific halibut and sablefish were noted as well-managed and received Monterey Bay Aquarium’s green, or “Best-choice,” rating. The DSFU believes these remarkable results are directly related to the implementation of a quota allocation system.

It is interesting that, with the decline of the crab fishery and the onset of a rationalization program initiative, crab skippers and crewmen strongly petitioned DSFU for representation in 2002. DSFU has stepped up, in adherence to its by-laws, to represent working fishermen.

Position Statement

The Union, and its members feel strongly that crab rationalization is the correct mechanism to revitalize the industry and encourage a safe, healthy and economically strong crab fishery. However, the members also have some very serious reservations about the plan as currently designed. The inclusion of processor shares and more particularly the 90:10 split is worrisome to our members. The fact that the Council passed an amendment that significantly weakens the arbitration safeguards for the harvesters is also of concern to our members. In our opinion, the processor share portion of the plan comes close to running afoul of the anti-trust laws and particularly the restraint of trade provisions. The membership is also concerned about the precedent it sets for the next fishery that rationalizes. Once processor shares are legitimized, we see them becoming a part of all rationalizing plans. When this is coupled with an almost negligible 3 percent share for skippers, it becomes even more difficult for the Union to not be concerned about the long-term consequences of the plan.

Finally, the absence of crew shares has to be of extreme concern to a Union representing working fishermen. A plan that, once again, gives no recognition to those who perform the overwhelming majority of the work resulting in the successful prosecution of any fishery can only be considered short-sighted and inequitable by the Union representing these working fishermen. We do recognize and appreciate the inclusion of a loan program intended to give crewmembers the opportunity to purchase quota. However, as can be seen in other fisheries, this is not as easy as envisioned and we feel initial crew shares would be a more equitable approach.

For these reasons, the DSFU believes it is in our members' best interests to not support or oppose the current plan at this time. The Union is heartened by the Council's letter of 6 May stating its intentions to closely monitor the arbitration and community protection sections of the plan and its intention to ask congress for assistance if the plan does not work as anticipated. However, the DSFU believes we should reserve our judgement until legislation is enacted and the plan is allowed to work for a period of time. We believe that the anticipated positive effects or feared negative results will emerge over time and if the results are negative, we would respectfully like to reserve our right to petition the Council and ultimately the Legislature for relief and modifications as necessary.

City of Sand Point



RESOLUTION 2003-09

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SAND POINT
SUPPORTING ALASKA'S INDEPENDENT COMMERCIAL FISHERMEN AND
ALASKA'S FISH PROCESSING INDUSTRY AND OPPOSING THE
ESTABLISHMENT OF PROCESSOR QUOTA SHARES.**

WHEREAS the City of Sand Point supports the commercial fishermen of Alaska, who are the lifeblood of our coastal communities and who provide economic opportunity and diversity for our coastal communities; and

WHEREAS the City of Sand Point supports the Alaska fish processing industry which provides investment in the state and is the largest employment base in many Alaska coastal communities and in Sand Point; and

WHEREAS the City of Sand Point recognizes that commercial fishing is and will remain the predominant economic base for the majority of our coastal communities and Sand Point; and

WHEREAS the City of Sand Point supports the free enterprise system; and

WHEREAS the City of Sand Point recognizes that federal fishery management in the 200 mile Exclusive Economic Zone of the United States can have dramatic effects on the economic growth and stability of coastal communities and Sand Point; and

WHEREAS the North Pacific Fishery Management Council has proposed a rationalization plan for management of the crab stocks in the Bering Sea and Aleutian Islands area and is currently developing a rationalization plan for the Gulf of Alaska groundfish stocks; and

WHEREAS the Bering Sea and Aleutian Islands crab plan incorporates processor quota shares, which designate that 90 percent of the fishermen's catch must be sold to designated processors; and

WHEREAS the North Pacific Fishery Management Council's recommendation for processor control of a fishery is unprecedented in the United States; and

WHEREAS processor quota shares limit a fisherman's ability to sell to any other market by reducing or eliminating competition among processors; and

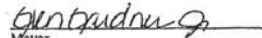
WHEREAS processors who are not granted processor quota shares will be placed at a serious competitive disadvantage and may discontinue all processing business affecting other fisheries, including salmon;

NOW THEREFORE BE IT RESOLVED that the City of Sand Point supports healthy relationships between fishermen, processors, and Alaska coastal communities, including Sand Point, that strengthen the commercial fishing industry and the free enterprise system; and be it

FURTHER RESOLVED that the City of Sand Point opposes the North Pacific Fishery Management Council's proposal to establish processor quota shares in the Bering Sea Aleutian Island Crab Rationalization Plan and the Gulf of Alaska Groundfish Rationalization Plan.

**PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE
SAND POINT CITY COUNCIL THIS 13th DAY OF MAY 2003.**

IN WITNESS THERETO:


Mayor

ATTEST:


City Clerk

PREPARED STATEMENT OF ALF O. SORVIK, OWNER, F/V RAINIER,
F/V PARAGON, F/V ISAFJORD

As a former member of the Alaska Crab Coalition ("ACC"), I am submitting this written testimony to refute the position of the ACC, as presented today by its executive director, Arne Thompson. I, along with many other independent crab fishermen, left the ACC when it became apparent the group no longer represented the interests of the independent fishermen and was simply a voice for the processor controlled and/or CDQ controlled crab fishing vessels.

I am a fisherman and I have been active in the crab fishery in the Bering Sea and Aleutian Islands since the 1960s. My vessels have harvested Red, Brown, and Blue King Crab; Opilio and Bairdi Tanner Crab for over 30 years. While I have fished for many of the processors that stand to gain an unfair advantage by the North Pacific Fishery Management Council's ("NPFMC's") proposed rationalization plan which endorses "processor shares," I cannot support this plan.

If the Commerce Committee allows this plan to move forward, you will be awarding the processing sector a monopoly. Further, this proposed plan goes against the wishes of almost all the Alaskan communities, violates our antitrust laws, sets a dangerous precedent for other fisheries, and illustrates just how precarious our Council's position in the management of our fisheries has become.

I ask you to send a clear message to all the Councils in our Country that the Commerce Committee will not stand for proposed rationalization plans that violate the law. The NPFMC needs to do what the crab sector asked and agreed upon; provide a rationalization plan in conjunction with a buyback program and let the crab sector solve its current economic problems without further diminishing the sector's position by granting the processing sector an unfair advantage through a "two pie/processor share" scheme.

In closing, this is bigger than just a crab rationalization program, it sets the course for further rationalization plans across the Country. Set the process on course and do not allow the NPFMC's proposed Bering Sea Rationalization plan to move forward with "processor shares."

PREPARED STATEMENT OF CAPT. GARY STEWART, F/V POLAR LADY

My name is Gary Stewart. I have fished crab in the Bering Sea since 1969. I have been a boat owner since 1978. I am president of the Alaska Marketing Association, the collective bargaining association of Bering Sea crab fishermen and the largest single group representing harvesters. The AMA negotiates crab prices for the entire Bering Sea crab fleet with the exception of the catcher-processor vessels.

The crab rationalization program seems to be slowly working its way through the bureaucratic process. It is looking more to me like the deck is being stacked against the crab fishermen of the Bering Sea. I have watched and participated in this process. I think this once promising program will reduce our fishing fleet to the status of serfs and sharecroppers. I believe that getting our IFQs may not be worth the price we will be paying. Do any of you think we will be better off with processor quota shares? I know that processors will be. I know that CDQ groups will be. Some fishing dependent communities may be while others, like Kodiak, will be harmed. I have strong doubts the fishing fleet will benefit.

The North Pacific Fisheries Management Council has sided with the processors on every phase of the rationalization process. The two-pie that the Alaska Crab Coalition sold me on was a program that gave processors a quota share for 80 percent of the crab. I didn't like it but thought it might be workable if a mechanism were in place to allow us to negotiate a fair price. Without public discussion, the NPFMC voted unanimously to give the processors 90 percent, with a binding arbitration process written by a processor attorney. A committee was formed to discuss arbitration models, and they had many meetings and spent a lot of time trying to hammer out a program we could live with—an ultimately is was all in vain as the NPFMC rubber-stamped the processors plan, ignoring the AMA and all other harvester groups.

For the first time that I can remember all the crab fishing groups agreed on something—the council's preferred binding arbitration model did not adequately protect harvesters. Jake Jacobsen, the AMA manager, went to the April council meetings and testified in favor of changes to the plan in order to better protect harvesters. The council voted against us 6–5.

I had hoped the processor quota share might get tossed out when the Alaska Crab Coalition (a harvester political group of 10–15 boat owners) pulled its support. That didn't last long.

I believe we are stuck with a binding arbitration program that will not be fair for harvesters. It was written by processors for processors.

The Unalaska City Council recently voted to endorse processor quota shares. Privately, some council members have said that they endorsed the plan only because they did not want to upset the all-powerful processors.

Questions I would like to have answers to:

1. Why did the NPFMC disregard public testimony on two-pie.
2. Why did the NPFMC go against the findings of their own analyst in regard to binding arbitration?
3. If processors need the protection of two-pie then why are they going to be able to buy 5 percent of the quota, each? Fishermen only get to own 1 percent of the fishing quota each!
4. Why was the AMA not invited to testify at the Senate committee hearing?

By my own unofficial survey eight out of ten boat owners are against processor quota shares, but many are afraid of retaliation from processors so they think they must keep quiet. They understand where the power will be in the future.

Processors have been telling us all along that if we want rationalization we better get in line and not object to anything they want. They must be telling the NPFMC the same thing.

If rationalization were to go away tomorrow who would lose the most? Would it be us fishermen? We would be back where we started. As a father who raised my family in the crab fishery and whose son is now fishing in the Bering Sea crab fisheries, I pray for a rationalized fishery. Processor quota shares are a bad idea. Sure, they make a big deal about the 10 percent harvesters will be able to deliver on the open market, but in truth the 10 percent is really much less (processors own many fishing boats)-and with processors holding boat loans and tendering contracts over the heads of harvesters, there is very little that will not be delivered to them.

Processors just about have the golden goose wrapped up. But would they really "pull the plug" on rationalization if fishermen ask for a system that is not so one-sided? With all that processors stand to lose, I think not.

GARY STEWART,
F/V Polar Lady.

PREPARED STATEMENT OF BOB STORRS, VICE PRESIDENT,
UNALASKA NATIVE FISHERMAN ASSOCIATION (UNFA)

Chairman McCain, Senator Stevens, and members of the Committee:

First, we would like to thank you for holding this hearing and receiving testimony regarding the Bering Sea crab rationalization plan put forward by the North Pacific Fishery Management Council (NPFMC), and in particular—the portion of that plan that deals with the gifting of exclusive processor quota shares to specific, largely foreign owned corporations.

There are some who would tell you that processor quota is an item that can rightfully be handled by the NPFMC. Nothing could be further from the truth. This is a question of national policy that reaches far beyond the domain of the Council.

The decision that you, as our elected representatives, make will reach far beyond price negotiations for seafood—far beyond economics and anti-trust issues, it is a matter of who will control not only our resources, but also the very social and political structure of our communities forever.

With that in mind, we only wish that you could have talked with some of the many people who have privately apologized to us for not taking a public stand on this issue because they fear for their markets or their jobs. This is a sad fact of life in the company town scenario. Hopefully it is not the road that you would send us down.

The Unalaska Native Fisherman Association, along with other fishermen's groups, city and village councils, independent processors, and ordinary citizens from across Alaska stands absolutely opposed to processor quota shares, and we feel that it is unfortunate that some with the State of Alaska and the NPFMC have accepted the arguments of several large companies as justified through the theories of one economist.

Dr. Matulich's views are based on data selectively released by the processors, and neither these findings nor his methodology find broad approval among other economists or by the independent review of the General Accounting Office.

Some people have asked us how processor quota would directly affect the members of UNFA. We offer a case in point:

Seven years ago, fishermen from Unalaska and some of the outlying villages met to discuss the formation of a co-op. The University of Alaska sent down two economists who helped us draw up by-laws and formulate a business plan. A lease arrangement was made for the last small family-owned processing plant in the Aleutians, and enthusiasm for the project ran high.

One week before we were to take possession of the facility, it burned to the ground in our town's most spectacular blaze since the Japanese attack of World War II.

Recently, people in our town have again begun to express an interest in re-activating the co-op, perhaps by using a small floating processor. One problem though—if processor quotas become a reality, that will be impossible.

We have repeatedly been told that the 10 percent of the quota left open to the free market would accommodate any future plans as well as lend some capitalist flavor to this attempt at a planned economy. That is ridiculous. As an economist who specializes in co-ops pointed out to us—you cannot have a viable co-op when your members are required by Federal law to deliver 90 percent of their product to the competition. That is not the American way of doing business.

The fact of the matter is, if you allow processor quota to become a reality, you will have made it functionally illegal for us to have a viable co-operative. You will have completed the job that the fire began.

After 100 years of American anti-trust legislation, is that really where you want us to be?

It is important to remember that all of the goals of fleet reduction, increased safety, community stability, as well as conservation concerns could be achieved without granting cartel status to a handful of companies. Conservation and safety issues are dealt with on deck and in the wheelhouse—not in a far away corporate boardroom.

In fact, all that has prevented the communities and the fishermen from achieving a safer, more rational fishery has been the fact that these corporations have held the public process hostage to their demands for control of the resource. They called it their “poison pill” and from the beginning, they made it clear that it had to be their way or no way. They realize that they have tremendous political power and that they are about to acquire much more.

This is particularly galling because huge questions continue to go unanswered: How great is this so-called corporate distress? Who owns how much of whom? Where are the profits—or the losses—being realized? How great are the losses to the U.S. Treasury due to abusive transfer pricing? What lessons, if any, are to be gleaned from the Bristol Bay price fixing case?

The Unalaska Native Fisherman Association has, from the beginning, insisted that for there to be any meaningful discussion of relief to these companies, the books—from Seattle to Tokyo—must be opened.

Citing proprietary concerns, the companies have failed to do this. They have released only select data through their own select economist. We can see where that got us with Emon and Worldcom.

We find it ironic that any Alaskan fishermen who applies for a loan must completely bare his or her books—including all IRS records for years past, yet we stand on the verge of granting virtual ownership of a once publicly-owned American resource to a handful of trans-national companies—all purely on faith.

Even as we look beyond the forest of ledger sheets and corporate relationships, it is very difficult for many of us who make our living at sea to equate the financial distress of a crab fishing family to the pains of Nippon Suissan Kaisha—who just over year ago purchased Gorton's Seafoods and a similar Canadian company for 175 million dollars, and in so doing virtually completed the vertical integration of their operations in North America.

Make no mistake about it—we want these companies to prosper. Perhaps there are things we can do to assist them through what they claim are tough times; maybe with open books and open minds we can work together to find some new ideas that will benefit all of us. Let one thing be clear—granting the companies such unprecedented control over our resources and our lives should not even be an option.

The very idea of facilitating the passage of the processor quota abomination by initially applying it solely to our area is—for those of us UNFA members who have served our country in combat—particularly offensive.

Please remember, Alaskans deserve the same economic freedoms and protections enjoyed by all other Americans. We are citizens, not pariahs. That is why we urge you to reject the idea of processor quotas and allow us all to move forward in a public process unhindered by further threats of corporate veto.

Again, we thank you for your attention to this matter.

May 20, 2003

Members of the Committee:

Here is a petition signed by Unalaskans opposed to processor quotas, and also to the fact that the usual public process was bypassed in order to slide through City Resolution #2003-27. Because a "special meeting" was called only 24 hours public notice was required, hence the action was legal.

It is ironic that although neither our newspaper nor our local citizens were informed until the last minute, pro-processor groups in Seattle had been informed and had already prepared letters in support of the resolution a full eight days before the city council meeting. Perhaps that illustrates where our city administration's true constituency lies.

All of the signatures on this petition are local Unalaska residents, most are property owners, and they represent most of our local vessel owners. Two vessel owners who are strongly opposed to P.Q.'s were unable to sign due to the possible loss of their markets. Such is life in a company town.

Sincerely,



Bob Storrs, Vice President
Unalaska Native Fisherman's Association

(Enclosed are 150 signatures)

We, the undersigned, strongly oppose the passage of Resolution No. 2003-27, wherein the City of Unalaska would endorse a crab rationalization plan that would include guaranteed exclusive processing shares for 90% of the harvest to be awarded only to specific companies.

We are greatly concerned about the effects on our town, and resent the fact that it would forever preclude our fishermen from forming a viable local co-operative.

It is not possible to maintain a viable co-op when members are required by Federal law to deliver 90% of their product to the competition.

We believe that biological, safety, and community concerns can be addressed by plans that do not include the gift of an American public resource to a handful of largely foreign companies.

We further strongly object to the fact that a "special meeting" was called in order to bypass the normal public process, and that only after the processing companies and city council members were alerted was there any attempt to notify the general public, the Qawalangin Tribe, or the Unalaska Native Fisherman's Association.

We believe that an issue such as the granting of exclusive processor quota, that would change this town forever, deserves greater public participation—even a referendum—as opposed to this current abuse of our public process.

<u>Barry Fredericks</u>	<u>FN PEGGY ROSE</u>
<u>Ram de diggiti</u>	<u>Intrepid</u>
<u>Neather Whittum</u>	<u>Autumn Star</u>
<u>Peter L Lekanoff Sr</u>	<u>Wanda Lynn</u>
<u>Chuck Arth, Bush</u>	<u>Cocoon Cape</u>
<u>Helen Lekanoff</u>	<u>P.O. Box 374 Unalaska, AK 99685</u>
<u>Cora Holmes</u>	<u>P.O. Box 890, Unalaska AK 99685</u>
<u>Milton Holmes</u>	<u>P.O. Box 890 Unalaska AK 99685</u>
<u>John A. Bush</u>	<u>Avfarside Box 92038904</u>
<u>David L. Wray</u>	<u>P.O. Box 324 UNALASKA 99685</u>

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<u>Tasha Rae</u>	<u>Tasha Rae</u>
<u>Ed Daniels</u>	<u>Ed Daniels</u>
<u>Scott Jackson</u>	<u>Scott Jackson</u>
<u>Bress Schoenthaler</u>	<u>Bress Schoenthaler</u>
<u>CARL BYERS</u>	<u>Carl Byers</u>
<u>JERRY KHONBOSUK</u>	<u>Jerry Khonbosuk</u>
<u>NORMAN JONES</u>	<u>Norman Jones</u>
<u>Kay Jones</u>	<u>Kay Jones</u>
<u>Pete Hendrickson</u>	<u>Pete Hendrickson</u>
<u>Edward C. Baggley</u>	<u>Ed Baggley</u>
	<u>Flu Sa Devil</u>
	<u>Flu Sa Devil</u>

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<u>E. A. Buehler, Jr.</u>	<u>Bud's Remodel + Repair</u>
<u>Paul Z. Steffen</u>	<u>180 Outer Road, UNALASKA, AK</u>
<u>com. Hunter</u>	<u>P.O. Box 745 UNALASKA - AK 99684</u>
<u>Harold D. Skimming</u>	<u>(Autumn Star)</u>
<u>N. L. Knecht</u>	<u>Box 714 Unalaska</u>
<u>City of Unalaska</u>	<u>Box 990434 Dutch Harbor, AK 998</u>
<u>Larry J. Shadrinoff</u>	<u>P.O. Box 1082, Unalaska, AK 99685</u>
<u>Peter F. Galaktosoff</u>	<u>Box 332 Unalaska, AK 99685</u>
<u>Jimmie Jacobson</u>	<u>FLY PEGGY ROSE GUNNISON AK 99685</u>
<u>Andrew John</u>	<u>P.O. Box 1 Unalaska AK</u>
	<u>P.O. Box 115 Unalaska, AK 99685</u>
	<u>P.O. Box 143 Unalaska AK 99685</u>

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Joe Shadokoff
L. L. L. L.
S. E. L. L. L.
Steve Davis
Doug White
Jim Davis
Paul B. L. L. L.
Shirley L. L. L.
Paul R. L. L.
Foley L. L. L.

Edw. B. L. L. L. se.

Unodaska
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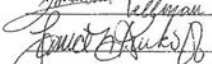
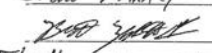
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Johnna Telford	PO BOX 684, UNALASKA, AK 99685
	Box 921234, Dutch Harbor AK 99692
Paul Murray	PO BOX 194 UNALASKA
	202 Unalaska
F/V Krishelle Tim Quinn	Box 48 Unalaska
F/V UALIC / Leah Ben	Box 1364 UNALASKA
Dave Mayone F/V Lucille	Box 920247 Dutch
George Blumhoffer	Box 503, UNALASKA
F/V Alouana Robert Johnson	Box 1002, Unalaska, AK

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<u>North L. Zellman</u>	<u>Box 88 Unalaska AK 99685</u>
<u>Brenda A. Zellman</u>	<u>Box 88 Unalaska AK</u>
<u>Laura Golodoff</u>	<u>P.O. Box 11 Unalaska, AK</u>
<u>Mike Carg</u>	<u>Box 35 Unalaska AK</u>
<u>Rylin Shushnikoff</u>	<u>Box 23 Unalaska 99685 AK</u>
<u>Demetri J. Hincok</u>	<u>Box 921181 DH ALASKA 99692</u>
<u>Carl Heston</u>	<u>Box 920224 DH AK 99692</u>
<u>Glynis Golodoff</u>	<u>Box 11 Unalaska, 99685</u>
<u>Al Miller</u>	<u>PO Box DUTCH 920634</u>
<u>James G. Huguley</u>	<u>P.O. Box 604 Unalaska AK 99685</u>

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<u>Sumner Dushkin</u>	<u>Dutch Harbor, AK</u>
<u>Ing P. J.</u>	<u>Dutch Harbor, AK</u>
<u>Shoy Shpanikoff Jr</u>	<u>Unalaska, AK</u>
<u>Vanessa Mendi</u>	<u>Unalaska, AK</u>
<u>Galena Dushkin</u>	<u>Unalaska, AK 99685</u>
<u>Michael Sweetser</u>	<u>Box 651 Unalaska, 99685</u>
<u>JEFF LA FRAIT</u>	<u>UNALASKA, AK</u>
<u>Patrick Belli</u>	<u>Dutch Harbor AK 99692</u>
<u>Kathleen P. P.</u>	<u>Dutch Harbor, AK.</u>
<u>James H. P.</u>	<u>Dutch Harbor, AK.</u>

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<u>Robert Mee</u>	Box 921156 Dutch 99692-1156
<u>Tatsuro McWilliams</u>	F/V MAFICK-Made P.O. Box 921577
<u>Paul Dan</u>	P.O. Box 920683 Dutch
<u>Francis Joseph Yager</u>	F/V Camille-J
<u>Bill Huistand</u>	F/V MBS Amber
<u>Robert Michel</u>	Home Phone 996-1157
<u>Paul G. ...</u>	P.O. Box 1002 99685
<u>Nancy Luff</u>	Unalaska AK
<u>Don Williams</u>	P.O. Box 44 99685
<u>Carl Redin</u>	P.O. Box 532 Unalaska, AK 9968
	P.O. Box 1172 Unalaska 581-4244

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<u>Unalaska</u>	<u>DESIREE ROSE</u>
<u>Alfred J. Dalrymple</u>	<u>Unalaska</u>
<u>Hal Lewis</u>	<u>Ester</u>
<u>Rick Knapp</u>	<u>Unalaska</u>
<u>Nikki Malis</u>	<u>Dutch Harbor AK</u>
<u>Calvin</u>	<u>CROSSFIRE</u>
<u>Cwly steel</u>	<u>PO BOX 148 Unalaska Ale.</u>
<u>Tom Hoodum</u>	<u>Bq 1381 Unalaska</u>
<u>Ch Helgeland</u>	<u>ARCTIC DAWN</u>

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<u>Richard E. McNeill</u>	<u>66 JACK LOWMAN DR. UNALASKA</u>
<u>John D. Dargatzis</u>	<u>90 Haystack</u>
<u>Pete Dargatzis</u>	<u>168 Choate Lane</u>
<u>Gerard Deeth</u>	<u>564 Dutton Rd, Unalaska</u>
<u>Bill Mome</u>	<u>1852 Ballyhoo Rd. Dutch Harbor</u>
<u>Michael A. Hunt</u>	<u>BOX 660 STEWARD RD DH</u>
<u>John C. Wale</u>	<u>P.O. Box 920554 DH.</u>
<u>Wm. L. Lippman</u>	<u>F/V PAULINE Lisle ^{Box 332} UNALASKA, AK.</u>
<u>[Signature]</u>	<u>P.O. Box 920471 Dutch Harbor, AK.</u>
<u>[Signature]</u>	<u>P.O. Box 1164 ⁹⁹⁶⁸⁹</u>

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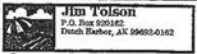
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<u>Bottigelli</u>	<u>Box 644 Unalaska</u>
<u>Marie E. Lowe</u>	<u>Box 920903 Dutch Harbor</u>
<u>Greg Schubauer</u>	<u>P.O. Box 920324 Dutch Harbor AK</u>
<u>Verla Robinson</u>	<u>Box 525 UNALASKA AK 99685</u>
<u>James Carlson</u>	
<u>Robert L. Delmo</u>	<u>P.O. Box 920303 D.H. AK 99682</u>
<u>James Shaubert</u>	<u>Box 211, Unalaska, 99685</u>
<u>Mike Ernst</u>	<u>Box 721310, DH, AK 99682</u>
<u>Scott S. G.</u>	<u>247 Dutch Harbor AK</u>
<u>Salma Simpson</u>	<u>P.O. Box 1102 Unalaska 99685</u>

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<u>R. Slom</u>	<u>F.V. Flying Oosik, Unalaska</u>	<u>581 2225</u>
<u>Chet R.</u>	<u># 6112</u>	
<u>John K. Hunt</u>	<u>581-4084</u>	
<u>Art Woodson</u>	<u>581-2535 Box 107 Unalaska</u>	
<u>Ernest S. Houshuk</u>	<u>Arctic Dawn</u>	<u>581-65824</u>
<u>Brenda G. Eklund</u>	<u>581-6581 Unalaska AK</u>	
<u>Yida Kudrin</u>	<u>581-1739 Unalaska</u>	
<u>SPACY JOHNSON MESTRE</u>	<u>3544013 Unalaska</u>	
<u>Uliya Chetka Beredkin</u>	<u>581-2025 - Unalaska</u>	
<u>J. O. O.</u>	<u>581-5200 - UNALASKA</u>	

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<u>Joshua Williams</u>	<u>John Zoff</u> <i>Flavio made</i>
<u>Leticia McIntyre</u>	<u>Joseph McCre</u>
<u>JAMES GARTH</u>	<u>James Garth</u>
<u>Mike Teehan</u>	<u>Mike Teehan</u>
<u>Erin Whithers</u>	<u>Erin Whithers</u>
<u>Dugleygett</u>	<u>Dugleygett</u>
<u>Joe R Bereskin</u>	<u>Joe R Bereskin</u>
<u>Brian Rankin</u>	<u>Brian Rankin</u>
<u>Vern Jackson</u>	<u>Vern Jackson</u>
<u>DAN KONDAK</u>	<u>Dan Kondak</u>

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<u>JD Martin</u>	<u>P.O. Box 501, UNALASKA</u>
<u>Boris Balakhoroff</u>	<u>UNALASKA, AK 99685</u>
<u>John J. [Signature]</u>	<u>P.O. Box 920901, DUTCH HARBOR</u>
	<u>P.O. Box 920338, Dutch Harbor 99692</u>
<u>[Signature]</u>	<u>P.O. Box 226 99685 Unalaska, AK</u>
<u>Chris Pice</u>	<u>Box 421, Unalaska, AK</u>
<u>Samuel Tellman</u>	<u>P.O. Box 88, UNALASKA, AK</u>
<u>Sequira Kraschoff</u>	<u>P.O. Box 35 Unalaska, AK</u>
<u>Ben Kraschoff</u>	<u>P.O. Box 196 Unalaska, AK 99685</u>
<u>Daniel Brune</u>	<u>P.O. Box 86, Unalaska, AK 99685</u>

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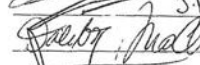
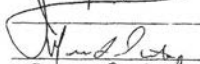
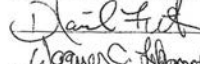
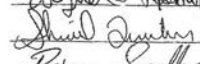
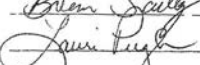




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	FIU Autom Star Box 1282 Unalaska, AK 99685
	PO Box 920787 Dutch Harbor AK 99692
	P.O. Box 920161 Dutch Harbor AK 99692
	PO Box 298, Unalaska, AK 99685
	PO Box 894, Unalaska, AK 99685
	PO Box 920593 - HI 99682
	P.O. Box 80 - Unalaska AK 99685
	PO Box 80, Unalaska AK 99685
	PO Box 920234 Dutch Harbor, AK 99692
	POB 921224 DH 99692

PREPARED STATEMENT OF SIMEON SWETZOF, JR., MAYOR,
CITY OF SAINT PAUL, ALASKA

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to provide testimony on the proposed Bering Sea Aleutian Island (BSAI) Crab Rationalization Program. When implemented, this will be an effective tool for the proper management of the BSAI crab resources and their sustainable commercial use by harvesters, processors, and communities.

My name is Simeon Swetzof. I was born on St. George Island, but was raised and have spent most of my life on St. Paul Island. My wife, Phyllis, and I have raised our four children on St. Paul.

I have served my community as a member of the City Council since 1994 and I have been Mayor of the City of St. Paul since 1999. In addition to my duties as Mayor, I am a commercial fisherman and subsistence hunter. Finally, I have represented St. Paul at the North Pacific Fishery Management Council (NPFMC) since 1998 and have been intimately involved in the development of the crab rationalization program being considered today and the effort to protect community interests in this process.

I. Introduction

Following the federally-mandated transition from fur sealing in 1983 and the completion of the St. Paul Harbor in 1990, St. Paul successfully developed a fisheries-based economy. From 1993 to 1999 St. Paul was the primary crab processing location in the Bering Sea and the second fishing port in Alaska, after Dutch Harbor/Unalaska, in terms of state tax revenues. In 1998 and 1999, crab deliveries to St. Paul exceeded 40 percent of the total harvest and the Harbor generated \$6 million per year in national economic benefits from opilio Tanner crab (also known as "snow" crab) alone, by providing an alternative to at-sea processing or delivery to more distant locations. The strategic value of the harbor, located in the middle of various Bering Sea fisheries, speaks for itself.

The considerable investments made by the community, the State of Alaska, and the Federal government to build a harbor and the accompanying infrastructure necessary to service the Bering Sea fishing fleet contributed to the generation of considerable wealth for the community as well as for harvesters and shore-based processors. Unfortunately, as a late entrant into the fishing industry, St. Paul was in the process of diversifying its crab dependent economy when the opilio stocks collapsed in 1999, taking with them 85 percent of St. Paul's economy and affecting related service industries such as air freight, refueling, supplies, and crab pot storage. The economic crisis has been compounded by a severe decline starting in 2002 of the halibut CDQ fishery, the second most significant activity on the island.

II. Collapse of the Bering Sea Crab Stocks and Impacts on St. Paul

a. Status of the Fishery:

The Bering Sea snow crab fishery, which was the subject of the year 2002, 2001 and 2000 commercial fishery failure determinations by the Secretary of Commerce, has continued in a state of severe decline. The National Marine Fisheries Service ("NMFS") trawl surveys for several years have determined that the stocks had not recovered to any significant extent. The 2003 harvest amounted to about 26 million pounds. Last year (2002), the State of Alaska, which manages the crab fishery, set the Guideline Harvest Level ("GHL") at 31 million pounds. Barely 23 million pounds were harvested in 2001, an 88 percent decrease from the 1999 harvest level of 192 million pounds.¹

The cause of the collapse of the Bering Sea crab stocks remains undetermined. NMFS' best available scientific information continues to suggest that the decline in

¹The year 2001 commercial fishery suffered further from extremely harsh weather conditions in which storms with hurricane force winds, together with some of the largest tides of the year, produced extremely dangerous sea conditions. The Alaska Department of Fish and Game reported to the NPFMC in April 2001 that "a number of vessels had wheelhouse windows blown out and other structural damage caused by large waves." As a result, many vessels were forced to head for safe port a full 12 hours before closure of the season, and the fishery was unable to harvest the full GHL.

In addition to the 86 percent reduction in the GHL from 1999 to 2001, and less than full harvest recovery due to severe weather conditions, the year 2001 commercial snow crab fishery faced a reduction in prices. At an ex vessel price of \$1.55 per pound, 30¢ per pound less than the previous year, the estimated 2001 snow crab fishery value was \$35.9 million. This compares to an overall fishery value in excess of \$55 million in 2000, and \$162 million in 1999. (ADF&G Report, April 2001).

the stocks is due to natural and environmental factors and not to fisheries management policies.²

b. St. Paul—the “most affected” community:

The NPFMC’s Snow (opilio) Crab Rebuilding Plan recognizes St. Paul as the coastal community “most affected by the low stock sizes of snow crab.”³ Crab landings and processing accounted for 85 percent of the cash entering the community in 1999. The City receives a 3 percent sales tax on crab delivered to and processed by floating processors within three nautical miles of the Island and a 3 percent sales tax on crab delivered inside the Harbor for processing. St. Paul also receives half of the fisheries revenues that the State receives as a 3 percent–5 percent tax on vessels fishing outside and inside of the harbor. In addition, the City receives sales tax on fuel and supplies that are sold in the Harbor, and derives revenue and jobs from the crab fishery in-harbor processors and service support to the crab vessels calling St. Paul.⁴

The community has suffered a loss of 82 percent to 90 percent in revenues from offshore and onshore processors, and harbor services in 2000 and 2001 as compared to 1999 due to the crab collapse. The total loss in revenues based on the fisheries collapse in those two years, as compared to 1999, was 85 percent and 83 percent, respectively. Those losses can be summarized as follows (in thousands, rounded to the nearest one-tenth of thousand dollars):⁵

City of St. Paul Revenue Impacts—Opilio Crab Fishery Collapse 1999–2002

[in thousands of \$]

Revenue Source	1999	2000	2001	2002	revenue decline 1999 v. 2000	revenue decline 1999 v. 2001	revenue decline 1999 v. 2002
Onshore processors	1,706.1	254.2	320.1	214.4	–86%	–82%	–88%
Offshore processors	1,011	156.8	84.1	331.1	–85%	–92%	–68%
Fuel distributors	85	11.4	30.8	32.7	–87%	–64%	–62%
Harbor services	759.5	77.5	137.3	199.9	–90%	–82%	–74%
Local businesses	75.4	28.4	63.1	63	–63%	–17%	–17%
Grand totals	3,637.1	528.3	635.4	841.1	–85%	–83%	–77%

The revenue losses were directly felt by the Island’s 650 native Aleut inhabitants by loss of jobs, loss of community health and safety services, loss of the community day care facilities, and curtailment in air passenger, cargo and bypass services to the mainland. As reported in the *Wall Street Journal*,⁶

St. Paul has been thrown into crisis. Layoffs are mounting, a food bank has opened and an exodus from the island has begun that could cripple one of the last intact native communities in the U.S. . . . Particularly hard hit has been the mainstay of the community, the town government of St. Paul, which has axed about half of its 90 workers. A day-care center for city workers was closed,

²See 66 Fed. Reg. 742, 742–46 (Jan. 4, 2001) (discussing NMFS’ approval of the Snow Crab Rebuilding Plan, Amendment 14 to the Fisheries Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab).

³The finding is made as part of the NPFMC’s examination of the importance of the fishery resource to fishing communities, mandated under National Standard 8 of the Magnuson-Stevens Act.

⁴The development of St. Paul’s crab dependent economy and a forecast for the future of the economy, in light of the collapse of the crab stocks, is discussed in the NRC Report, Attachment 4 hereto.

⁵These figures do not include other revenue sources which are not dependent on state of the Opilio crab harvests.

⁶*On This Alaska Island, Survival Is More Than Just a TV Game—A Cutback in Crabbing Quotas Leaves St. Paul Scrambling To Save its Way of Life*, THE WALL STREET JOURNAL, Jan. 15, 2001. The irony that St. Paul would be looking to subsistence hunting of the fur seal as a source of sustenance underscores the severe impact of the collapse of the crab stocks on St. Paul’s crab dependent economy.

killing five jobs, as was a town-run dental clinic, wiping out two more jobs and islanders' only access to dental care. [With protein supplies on the island dwindling, the native Aleuts of St. Paul are turning to subsistence hunting of seal,] "the island's last source of sustenance if all else fails."

III. Actions Taken by St. Paul in Response:

a. *Securing a Commercial Fishery Failure Determination:*

St. Paul's first step was to seek a determination by the Secretary of Commerce that a commercial fisheries disaster had taken place under Section 312(a) of the Magnuson-Stevens Act and that St. Paul be recognized as an affected fishing community.⁷ The Secretary made affirmative determinations for 2000, 2001, and 2002. As a result, disaster relief funding was set aside, providing affected communities in the Pribilofs and the Aleutian Chain with some degree of relief.

The City of St. Paul used its initial share of these funds to increase water storage capacity for fish processing and fire protection, both necessary steps to develop the infrastructure required for diversification into other fisheries in order to reduce the island's overwhelming dependence on crab. Together with the Corps of Engineers, the City has also pursued the Harbor Improvements Project in part in order to attract a multispecies processing, shore-based, facility to the island. Negotiations with processing companies are ongoing and their success rests in part on the implementation of the crab rationalization program and the economic stability that will accompany it.

b. *Vessel Buy-Back Program and BSAI Crab Rationalization:*

As part of its multi-pronged response to the crab collapse, St. Paul also played an active role in promoting initiatives supported by most of the crab industry to reduce the capitalization of the fishery by: (1) promoting a fishing capacity reduction program whose goal is to implement a license and vessel buyback program, and (2) rationalizing the BSAI crab fisheries. Efforts with regards to the latter resulted in Congress directing the NPFMC, as part of the Consolidated Appropriations Act of 2001 (P.C. 106-554), to:

"... examine fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries to determine whether rationalization is needed. In particular the NPFMC shall analyze individual fishing quotas, processor quotas, cooperatives, and *quotas held by communities* (emphasis added). The analysis should include an economic analysis of the impact of all options on *communities* (emphasis added) and processors as well as the fishing fleets. The NPFMC shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner."

After undertaking the congressionally mandated analysis and an exhaustive four year process of public input, and meetings by industry sectors and NPFMC members, the Council concluded that rationalization of the crab fishery would improve economic conditions substantially, for all sectors of the crab industry. At its June 2002 meeting in Unalaska, the NPFMC by a unanimous 11 to 0 vote, identified a specific rationalization program as its preferred alternative for rationalization of the BSAI crab fisheries. The vote on its preferred alternative known as a "Three-Pie Voluntary Cooperative Program" reflects the fact that this is a comprehensive program that balances the interests of communities, harvesters, processors, captains, and the resource, and incorporates short and long-term safeguards for all of them.

IV. St. Paul: A Leading Proponent of Regionalization

From the outset, St. Paul has been a leading advocate for the inclusion of crab-dependent community concerns in any BSAI crab rationalization scheme. One of the ground-breaking concepts that the community I represent has helped to promote is the concept of regionalization of BSAI crab landings consistent with recent industry behavior.

St. Paul views regionalization as the most effective tool for fulfilling the guidelines of Standard 8 of the Magnuson-Stevens Act and accommodating the diverse

⁷ Under Section 312(a) of the Magnuson-Stevens Act the Secretary is authorized to exercise discretion in determining whether there is a commercial fishery failure due to a fishery resource disaster resulting from: (a) natural causes; (b) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or (c) undetermined causes. Such a determination authorizes the Secretary to provide funds appropriated for the purpose of "assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure."

interests within the BSAI crab fishery. Standard 8 directs the fishery councils to take into account the need for sustained participation of fishing communities in the fisheries. The need for regionalization arose in order to protect St. Paul's (and other BSAI communities') livelihood and the considerable infrastructure investments made to develop a port which has served the BSAI crab industry very effectively and profitably. During the 1990s, St. Paul benefited from a derby-style, race-for-fish scenario where vessels delivered crab to the nearest available harbor, in order to immediately depart for further loads of nearby abundant crab stocks. In a rationalized fishery however, the race-for-fish, would be eliminated and furthermore, with the Guideline Harvest Levels (GHL) dramatically reduced as a result of the biomass collapse, harvesters would be limited to single trips and would therefore be more likely to deliver their crab to other ports such as Dutch Harbor/Unalaska or to their homeports including Kodiak, where a number of harvesters are based.

Just as harvester and processor investments have been recognized and protected in prior rationalization schemes, St. Paul took the novel approach of insisting that community considerations needed to be legitimately factored into this process. The stakes were considerable for St. Paul, which, unlike economically diversified communities in the Gulf of Alaska, is almost entirely dependent on crab processing. While St. Paul's strategic location and its existing infrastructure make it a competitive port, most of the processing operations in the Pribilof Islands are "satellite plants" for diversified, parent seafood companies. Therefore, with the incentive for decapitalization and consolidation in a rationalized fishery, St. Paul was at risk of seeing local processing operations retreating south to larger facilities in Dutch Harbor, Akutan, and Kodiak.

Regionalization will prevent this migration from taking place, allowing St. Paul and other northern communities to survive. In addition, the longer runs involved between the fishing grounds and ports such as Dutch Harbor or Kodiak in a non-regionalized scenario would have implied additional fuel costs to harvesters and greater deadloss, to the detriment of the resource.

More importantly, as is highlighted by the crab disaster, St. Paul's long-term survival is dependent on its diversification into other commercially valuable fish species. Even moderate volumes of BSAI crab valued at \$1.50/pound or better go a long way to supporting a processor's overhead costs, allowing it to engage in lesser-value cod, salmon, and groundfish processing. Therefore, consolidation of crab processing away from the Pribilofs would severely impair St. Paul's capacity to diversify since this activity provides a foundation for cod, IFQ halibut, and CDQ halibut processing.

V. Benefits to the Resource and the Fleet

Prior experiences in other rationalized fisheries indicate that the crab resource will benefit from reductions in bycatch and associated mortality rates. Environmental benefits will accrue as well from the mechanisms to reduce excess harvesting and processing capacities. With slower seasons in which to prosecute the fishery, fewer crab pots will be lost at sea and deadloss and bycatch will be reduced. A healthier, better managed resource is critical to St. Paul as well, since my community's long-term livelihood depends on the sustainable use of the Bering Sea fisheries that surround us.

Moreover, within the high-risk Alaska commercial fishing industry, the BSAI crab fisheries had a disproportionately high level of injuries and deaths. From 1990–2001 a total of 25 vessels were lost resulting in forty deaths. Twenty-one more lives were lost as a result of being swept overboard, crushed by crab pots or entangled in lines. Experience demonstrates that to the extent that a rationalized management system results in a sustainable, economically viable fishery, then improvements in safety should follow. In a scenario where the "race-for-fish" is eliminated, fatalities resulting from having to fish in poor weather conditions should be reduced.

VI. The Rationalization Program from the Community Perspective

Under the proposed program, allocations of harvest shares would be made to harvesters, communities, and captains. Moreover, processors would be allocated processing shares and harvesters would be permitted to consolidate their efficiencies by forming cooperatives. From a community perspective, establishment of processor shares protects the considerable investments made by processing companies in remote coastal Alaskan communities such as St. Paul. These investments typically include the processing facility itself, labor housing, docks, cold storage, tender vessels, and other infrastructure.

Communities for their part have spent significant resources on harbor improvements, docks, water/sewer systems, roads, emergency support services, and community administration to attract and accommodate processors. As a result of these types of investments, St. Paul is today the most indebted community in Alaska on

a per capita basis. Furthermore, the processing of crab on-shore leaves behind numerous benefits to the host community and to the State through taxes, job, and infrastructure development. In effect, processor shares are necessary for regionalization to work for communities. As a largely processing town, St. Paul's future is linked to the processors that have invested or will invest there.

Processor allocations and the corresponding 90 percent of the harvester allocations will be designated under the program into northern and southern regions, based on historic participation. Provisions allowing for the non-regionally designated 10 percent of harvester allocations to be delivered to any processor at any port ensure that a substantial portion of the crab resource will be subject to competition among ports and processors seeking to attract deliveries. The BSAI crab rationalization plan provides the harvesting sector with more flexibility, for example, than is allowed under the highly successful American Fisheries Act. Movement is also allowed within the regions to provide for some flexibility and competition for private enterprise.

However, as specified in the trailing amendments, a two-year "cooling off period" has been established during which processing shares must remain in communities where processing was historically conducted, so as to avoid a "rush" to consolidation in a few ports immediately after implementation of the program. In addition, communities and CDQ groups have been granted a right of first refusal on the sale of processing shares to protect crab-processing dependent communities.

To accommodate periods of abundance in the crab stocks and provide opportunities for new processors and communities to compete, caps of 175 million pounds for opilio and 20 million pounds for Bristol Bay red king crab have been established on the amount of IPQs granted for the two largest crab fisheries. However, if stocks continue to remain low (and below those caps) the IPQs will provide stability to the processing sector and crab dependent communities.

Other important community friendly provisions from St. Paul's perspective include an increase in CDQ crab allocations from 7.5 percent to 10 percent of the Total Allowable Catch (TAC). CDQ groups are required to deliver at least 25 percent of the allocation to shore based processors. On St. Paul, this will encourage further economic development by our local CDQ organization, the Central Bering Sea Fishermen's Association (CBSFA). As there are few significant economic activities that can be engaged-in in geographically isolated communities in the Bering Sea, these increases in allocation have the potential to be significant if and when the various crab stocks rebound.

Moreover, either St. Paul or CBSFA will benefit from provisions extending community purchase rights of harvesting and processing shares to community and CDQ groups. These purchases would be conditioned on the use of these shares for the benefit of community residents. Finally, CDQ groups have been granted higher ownership caps than individuals purchasing shares in order to give such groups the wherewithal to consolidate their economic interest in the crab fisheries to the benefit of Western Alaska residents.

VII. Conclusion

As stated earlier, the crab rationalization program is a carefully balanced plan that requires the unique structure approved by the NPFMC to protect all of the participants in this fishery. In this regard, we applaud the work patiently undertaken by the Council members and staffpersons for over four years.

Concerning BSAI crab dependent communities, reducing or eliminating IPQs would prevent this framework from working and would leave communities unable to safeguard the processing activities that are critical to the economic health of remote Bering Sea communities. For this reason, we urge Congress to support the NPFMC's plan by enacting legislation as expeditiously as possible. After four years of economic crisis, this rationalization program is needed in order to revitalize severely depressed Bering Sea communities. Unlike other parts of Alaska, remote communities in the Aleutian Chain and particularly in the Pribilof Islands are highly dependent on this program for their economic well-being and survival.

Mr. Chairman, and distinguished members of the Subcommittee, thank you for this opportunity to provide written testimony on behalf of the City, and the community, of St. Paul. We look forward to discussing these issues with you and your staffs.



CITY OF SAINT PAUL

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RESOLUTION 01-07

**A RESOLUTION OF THE ST. PAUL CITY COUNCIL IN SUPPORT OF CRAB
RATIONALIZATION FOR THE BERING SEA ALEUTIAN ISLAND CRAB FISHERIES**

WHEREAS, St. Paul has successfully developed a fisheries based economy based on the St. Paul Harbor which, since 1995, has been the primary crab processing location in the Bering Sea and the number two fishing port in Alaska in terms of fisheries tax revenues; and

WHEREAS, crab deliveries to St. Paul exceeded 40% of the total harvest in years 1997 and 1998; and

WHEREAS, St. Paul crab landings and processing have accounted for approximately 85% of the cash entering the community; and

WHEREAS, a collapse of the Bering Sea crab stocks occurred in 2000 resulting in an 86% reduction in the year 2000 Guideline Harvest Level for Bering Sea snow crab, and a significant loss of revenue to the community; and

WHEREAS, the collapse of the Bering Sea crab stocks has resulted in an industry-wide effort of harvesters, processors, and communities to develop a rationalization program; and

WHEREAS, St. Paul has actively participated in the development of a rationalization program in order to protect its investment in the industry, which continues to face a severe downturn on crab stocks and high levels of overcapitalization in both processing and harvesting; and

WHEREAS, the situation warrants immediate legislative relief to enable an alternative management solution to encourage restoration of the stocks and to enable industry consolidation; and

WHEREAS, the United States Congress authorized, through the December 2000 Omnibus Appropriations Bill, provisions which direct the North Pacific Fisheries Management Council to do an analysis of crab rationalization options; and

WHEREAS, the analysis of any quota based program is specifically to include harvesters, processors and communities; and

Resolution 01-07
Page 2 of 2

WHEREAS, the North Pacific Fishery Management Council has stated that it is still committed to the overall rationalization process for the crab fisheries; and

WHEREAS, the North Pacific Fishery Management Council appointed a crab rationalization committee and the City of Saint Paul had a representative appointed to the committee that kept the St. Paul City Council advised on the committee's progress and recommendations to the North Pacific Fishery Management Council; and

WHEREAS, the Council of the City of Saint Paul supports and recognizes the need to protect the investments of current participants, including harvesters, processors and the community of St. Paul, as well as other affected fishing communities, and the need for a rational decapitalization of the industry;


NOW THEREFORE, BE IT RESOLVED THAT the Council of the City of Saint Paul supports the proposal for a fair and equitable quota-based program of a two-pie IFQ allocation to harvesters and processors including the requirement that the live crab deliveries be to processors in the regions within Alaska in accordance with recency requirements and historic delivery rates; and

BE IT FURTHER RESOLVED that the St. Paul City Council urges the North Pacific Fishery Management Council to complete their analysis in a timely manner as they feel this issue is of utmost importance and forward their report on to Congress as soon as possible.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE COUNCIL OF THE CITY SAINT PAUL THIS 23RD DAY OF MAY 2001.


Simeon Swetzof, Jr., Mayor

ATTEST:


Phyllis A. Swetzof, City Clerk

PREPARED STATEMENT OF STEPHEN R. TAUFEN, FOUNDER,
 GROUNDSWELL FISHERIES MOVEMENT

Dear Commerce Committee Senators & Chairman McCain:

The Groundswell Fisheries Movement is primarily concerned about networks of foreign owned seafood companies and their global affiliates, and “*abusive transfer pricing*” practices that shift profits offshore to avoid U.S. taxes. Crab “*rationalization*” is just one more scheme that will harm the U.S. Balance of Payments and allow more hidden tax evasion that deprives the U.S. of the “*maximum net national benefit*” from its fisheries resources.

We believe that the Senate should not allow illicit drains on the U.S. Treasury, derived by unfettered tax evasion (hidden behind taxpayer nondisclosure protections that wrongly protect foreign evaders doing business in the USA) and by granting exemptions from antitrust scrutiny.

Instrumental rationalization depends upon fair economics and a balance of market powers. Just as for the NASDAQ, mathematicians and economists know that for investment markets to fairly benefit everyone, *resource commoditization economics must remain a “win win” game for all investors.*

Furthermore, Congress should not institute ‘binding arbitration’ processes that protect the commercial secrecy of tax evading foreign multinationals in ways that guarantee a losing negotiation game for highly invested U.S. harvesters, whose costs are fully known to these buying adversaries.

Groundswell is highly concerned about further “regulation-negotiation style” political intrusions promoting concentration on the buying side of Alaska’s seafood markets while the economic problems are generally on the selling side. Properly addressing problems on the selling side (harvester grounds prices), the Department of Commerce is currently reviewing undertaking a \$100 million vessel buyback program to lessen pressure on crab fisheries.

It is a matter of too many boats currently chasing too few crabs. It is not rational to resolve this by forcefully collectivizing fleets and forever misbalancing market powers.

The Department of Justice is currently looking into Crab Rationalization and has been communicating with the North Pacific Fisheries Management Council on this matter. *The Senate should consider waiting until that DOJ report is available*, and remember that *the DOJ wrongly dismissed a 1997-era set of criminal indictments recommended by its San Francisco branch against Japanese fisheries multinationals operating in the U.S. on the idea that “one species does not an industry make.”*

Conveniently, since that time, *these foreign firms and others have been marching one-species-at-a-time to take over our North Pacific resource rights* through their U.S. affiliates and subsidiaries. Those firms feel that they were granted immunity from prosecution under pollock schemes, which goes a long way to explain why they believe the Congress should grant further antitrust exemptions in Crab Rationalization schemes, too.

Accordingly, *Congress should also consider asking the GAO to further examine the overall structural economic problems of Alaska’s fisheries—especially the current role of foreign financing and effects of practices of Abusive Transfer Pricing.*

Likewise, there is much to be learned about the economic players involved from a major “restraint of trade” trial, *L. Alakayak et al v. BC Packers et al* (Alaska superior court case #3AN-95-04676 Civil), which began February 3 and lands this week in the jury’s hands. It involves dozens of U.S. seafood processors, Japanese importers and their American subsidiaries as defendants. Congress must wait for its verdict.

Many defendants are the same firms who ask for exclusivity in controlling crab-buying markets in Alaska. Before giving away national crab rights to them, Congress should know if they are law-abiding, and about their entire global resource strategy.

There are also serious conflicts-of-interest that have plagued the North Pacific Fishery Management Council, which has been for many of the defendants’ a control point for Crab Rationalization and other policy-making. *Groundswell* has repeatedly testified on the public record regarding the matters of abusive pricing practices, to no avail. This Council is not listening and incapacitated in its policy making (unable to protect the United States’ interests) because of its conflicts-of-interest.

The salmon antitrust case evidence has already revealed that the free market (an interplay of “supply and demand” and arm’s length transactions) for much of our seafood is a conspiratorial fraud, and that in the case of salmon, the oligopsony of buying companies runs parallel offshore markets in farmed fish to lower Alaska wild fish prices.

The abundant evidence of “price verification” phone calls among buyers removes all doubt about the interrelated workings of the *oligopsony* that salmon harvesters have faced. Economists have estimated the market losses to be over \$380 million before applying treble damages in this \$1.4 billion case. We must not forget that an earlier crab antitrust case showed the price-fixing behavior exists across species in Alaska fisheries.

Many of these firms were under a Federal “consent decree” yet continued to communicate on crab issues, and on pollock and salmon, acting unfettered in forwarding their restraints of trade.

One need look no further for “the grounds price problem” than the pollock fisheries, where similar, exclusive rights were granted under the American (sic) Fisheries Act. *On the Japan side of the North Pacific, catcher fleets receive nearly three times the price for deliveries as do Alaskan fleets in U.S. ports, for similar product.* That caused an estimated shortfall of \$1.9 billion over the past seven years to the U.S. pollock fleet compared to what they logically should have received.

Granting similar oligopsony power for crab will worsen the negative economic shock on U.S. fleets and our economy, only benefiting the Japanese financiers and processors. They repatriate about a billion dollars annually through abusive transfer pricing (ATP) techniques to foreign shores, harming the U.S. economy directly and through multiplier effects of the lost dollars.

This is an alternative essence of management from that promised by the original Magnuson Fisheries Act, where harvesters and processors would together “Americanize” our Alaskan fisheries and pay taxes. Otherwise, one would assume that a national fish price would be the logical means to protect U.S. interests in our fisheries.

Congress should not grant exclusive rights to a few corporations on the crab buying side because it also affects their price-making powers over other species, too. They are already promoting a non-competitive “salmon rationalization” scheme that promises to take more rights away from small businesses and forever eliminate large competitors from new entry into the market. And they are talking of similar powers over other species. There is no end to their greed.

It is not rational to stifle competition and innovation, especially as our naturally healthy seafood supplies become increasingly valuable. To ensure that these few buyers are granted exclusive national resource buying rights, *in perpetuity*, from captive fleets—especially in light of their alleged conduct in other seafood markets—is unimaginable.

Thank you for your considerations regarding today’s Commerce committee meeting.

STEPHEN R. TAUFEN,
Founder,
 Groundswell Fisheries Movement.

Cc: Senator Maria Cantwell
 Senator Olympia Snowe

PREPARED STATEMENT OF MIMI TOLVA

Dear Senate Commerce Committee,

The Crab Rationalization program was originally started to allow Bering Sea crab fishermen to harvest the resource in a safer, economically sound manner while drastically reducing mortality of bycatch and harvested product. By allocating a certain allowable catch to each harvester, (an Individual Fishing Quota, or IFQ), the derby-style fishery each winter would be eliminated. Fishermen could choose to fish in better weather, reducing the accidents and injuries that have plagued the fishery, currently ranked as the most dangerous occupation in the United States. With more time and better weather, the quality of the product would be enhanced, mortality would be reduced, and bycatch levels would drop dramatically.

The North Pacific Fishery Management Council (NPFMC) was appointed to develop a plan to implement these ideas for the long-term health of the fishery. Much time and effort and many years have gone by, and a pretty good plan has emerged.

However, one very controversial issue threatens to undermine the entire plan. A Processor Quota Shares (PQS) proposal has been added to offer protection to existing processors already in the crab market. Under the PQS proposal, harvester shares would be designated “A-shares” and “B-shares”. Harvesters would be forced to sell all of their “A-shares” to a specified processor. The remaining “B-shares” are intended to give harvesters negotiating power, provide a market price indicator at the beginning of each season, and allow harvesters to sell that portion to any buyer they wished.

In June of 2002, the NPFMC voted to accept this proposal at a ratio of 90 percent A shares and 10 percent B-shares. (You read that right)

With a 90 percent A-share ratio, processors will not need to competitively bid on product. Fishermen will not be able to negotiate a fair price. Almost total control by a few canneries will squelch any new developing crab markets and negatively affect price negotiations for the entire crab industry. This system would be anti-competitive and would severely curtail or eliminate opportunities for small processing businesses and independent fishermen. It goes completely against the free market system and would require a change in the current anti-trust laws to even be legal.

Crab Rationalization is not complete. The Processor Quota Share component is not necessary to implement the rest of the plan. The processor quota component could be pulled from the overall plan if enough people weigh in on the issue. It could also be modified to a more fair and equitable split of 50 percent each of "A" and "B" shares.

Please do not allow this very biased proposal to go through as it stands now, with the 90:10 ratio.

MIMI TOLVA

PREPARED STATEMENT OF PETER TYACK, SENIOR SCIENTIST AND WALTER A. AND HOPE NOYES SMITH CHAIR, BIOLOGY DEPARTMENT, WOODS HOLE OCEANOGRAPHIC INSTITUTION

Madame Chair and distinguished members of the Committee, my name is Peter L. Tyack. I am a Senior Scientist and Walter A. and Hope Noyes Smith Chair in the Biology Department of the Woods Hole Oceanographic Institution in Woods Hole Massachusetts. Thank you for the opportunity to provide my views on the Marine Mammal Protection Act (MMPA) reauthorization as it relates to scientific research.

I have been fascinated since I was a child in the social behavior of marine mammals and how they use sound to communicate and explore their environment. I have spent much of the last 25 years following these animals at sea, listening to their sounds and watching their behavior. As I started my career in basic research it never occurred to me that chasing my personal interests would ever become central to such an important policy issue. In my testimony I address issues concerning regulation of harassment takes under the MMPA, especially those for scientific research and incidental takes resulting from exposure to manmade noise.

Introduction

Three committees of the National Research Council (NRC) of the National Academy of Sciences have reviewed issues concerning low frequency sound and marine mammals. Each of these NRC committees has published a report:

National Research Council (NRC). 1994. *Low-Frequency Sound and Marine Mammals: Current Knowledge and Research Needs*. National Academy Press, Washington, D.C.

National Research Council (NRC). 2000. *Marine Mammals and Low-Frequency Sound: Progress Since 1994*. National Academy Press, Washington, D.C.

National Research Council (NRC). 2003. *Ocean Noise and Marine Mammals*. National Academy Press, Washington, D.C.

I was a member of the first two committees and reviewed for the NRC the report produced by the third committee. I would like to take this opportunity not only to give my personal views, but to reiterate some of the repeated suggestions of the NRC committees for changes to the MMPA.

Regulations to protect marine mammals need to be drawn to focus scarce regulatory resources on situations where "takes" are most likely to risk adverse impacts to marine mammals.

One of the most important suggestions of the NRC reports on marine mammals and ocean noise is to regulate harassment in the same way for all activities, allocating regulatory effort where harassment takes are most likely to risk adverse impacts to marine mammals. Currently we are far from this goal. For commercial fisheries, the MMPA allows incidental taking of endangered marine mammals as long as there is negligible impact from incidental mortality and serious injury. NMFS interprets this as an exemption for commercial fisheries from the prohibition of harassment. Harassment takes are ignored for effects of propulsion noise from vessels, and a NMFS enforcement officer reported to the Marine Mammal Commission last year that his region will not prosecute cases of level B harassment for companies that take tourists to swim with wild dolphins. This growing industry based upon

intentional harassment thus can count on freedom from prosecution of its violations of the MMPA. On the other hand, marine mammal biologists are required to wait half a year or more for permits covering the slightest possibility that their research may disrupt the behavior of marine mammals. Once they receive a permit, the permitting process itself may trigger litigation that can block urgently needed conservation research. Many other users of sound in the sea, from the Navy to geophysical contractors to academic oceanographers, find themselves in a no man's land, where the appropriate regulatory process for harassment takes is obscure. So far the solutions of the regulatory agencies have fared poorly in court.

Congress speaks through the MMPA to give commercial fisheries a special exemption with much more scope to harm marine mammals than other activities such as conservation research, naval exercises, or oil exploration. This is in effect a statement of national priorities, ranking activities for which the United States is most willing to risk the well being of marine mammals. I would ask all members of this Committee to stop and think whether commercial fishing should automatically rank as a higher national priority than scientific research, the search for domestic sources of petroleum, or the ability to protect ourselves from enemy submarines.

Problems with permitting scientific research on marine mammals.

As a biologist personally concerned with protecting marine life, I believe that the double standards in the MMPA have led to a counterproductive situation for permitting scientific research designed to protect marine mammals. The permitting process was created to allow an exemption for scientific research from the MMPA prohibition on taking marine mammals. It is ironic that, far from exempting research from an effective prohibition, the permitting process restricts for researchers, activities that are unregulated for other users. As early as 1985, NMFS stated in its Annual Report on the MMPA that "one of the most extensive administrative programs in NMFS is the permit system that authorizes the taking of marine mammals for scientific research and public display." From my perspective, this is backwards. Scarce regulatory resources should only be devoted to minor harassment takes for research after the much more significant takes of activities that do not benefit marine mammals are controlled by regulations that are effectively enforced. As I pointed out in a 1989 article, a scientist playing back the sounds of a tanker to monitor responses of whales requires a permit to cover any "takes" for animals whose behavior has changed, while the thousands of tankers entering U.S. ports are unregulated. This is particularly ironic since the first warning about effects of noise on marine mammals concerned the risk that increased shipping noise might significantly reduce the range over which whales could communicate, a warning issued in 1972, the year the MMPA was enacted. Not only can they ignore the likely disruption of behavior caused by noise, but even the lethal "impacts" caused when a vessel collides with a whale are completely unregulated. Nothing we have learned in the following decades has reduced scientific concern, yet in spite of three decades of warnings, NMFS has not taken the first step to protect whales from the risks posed by vessel traffic.

It has been recognized for over a decade that the regulatory focus on research activities is interfering with research needed to obtain critical information to evaluate risk factors for noise exposure in the sea. As the 1994 National Academy report on Low-frequency Sound and Marine Mammals put it:

Scientists who propose to conduct research directed toward marine mammals are aware of the permitting requirements of the MMPA and of the Endangered Species Act (ESA) and the associated regulations. Most of their research can be conducted under the scientific permitting process. They routinely apply for and obtain such scientific research permits. However, the lengthy and unpredictable duration of this process can create serious difficulties for research. . . . In addition to permit delays, certain types of research that are considered "invasive" or "controversial" either are not allowed under the current permitting process or may require an Environmental Assessment or even an Environmental Impact Statement under the National Environmental Protection Act (NEPA). Such a regulatory burden actively discourages researchers from pursuing those lines of study. (p 29)

The committee strongly agrees with the objective of marine mammal conservation, but it believes that the present emphasis on regulation of research is unnecessarily restrictive. Not only is research hampered, but the process of training and employing scientists with suitable skills is impeded when research projects cannot go forward. Experienced researchers are the ultimate source for expanding our knowledge of marine mammals. A policy that interferes with the development of this resource appears to be self-defeating. (p 30)

Things were bad in 1994, but they have recently become much worse. The delays for permitting have become much longer, over 21 months in some cases. In addition, the judge in a recent court case regarding the permitting process ruled that all acoustic research on marine mammals is controversial. This led him to rule that a permit for acoustic research requires an accompanying Environmental Assessment or Environmental Impact Statement. This decision means that all of the research that can help resolve the marine mammal issues raised by the National Academy reports is subject to much more regulatory burden than before. Unless Congress changes the regulatory process or provides new funds to the NMFS Office of Protected Resources to conduct the analyses required under NEPA, the permitting process will not only discourage research, but may make it almost impossible to conduct some research that is urgently needed for conservation biology and that has negligible effects.

Let me illustrate with an example from the research of Scott Kraus, a biologist at the New England Aquarium who has studied North Atlantic right whales for decades under a series of research permits from NMFS. In August of 2001, he applied for a new permit, as his old one was set to expire 31 December 2001. In November 2001, after the end of the public comment period, the Permit Division received a letter from a self styled "environmental warrior" claiming, incorrectly in my belief, that the research would harm right whales. In early December 2001, operating under his old permit, Kraus started aerial surveys to keep ships from hitting whales, and he was told the biological opinion for the new permit was almost done. Kraus never received his permit by the time his old one expired, and on 24 January 2002, NMFS informed him that they would defer decisions on a permit until an Environmental Assessment was conducted following NEPA rules. This was a complete surprise for Kraus, who had to cancel a research program designed to develop whale-safe lines for fishing gear. During 2002, eight right whales were known to get entangled in fishing gear, and six were thought to have died. It is now May 2003. Kraus had to cancel another attempt to repeat the whale safe fishing line project in 2003, and he still has no prediction from the NMFS Permit Division as to when his permit will be issued. There may be a new determination of a need under NEPA for an Environmental Impact Statement for his permit, not just an Environmental Assessment.

Let me recap. The survival of right whales in the North Atlantic is threatened because so many are killed from entanglement in fishing gear and from vessel collision. Unlike any airline, as a scientist, Kraus needs a permit to fly over right whales, in case the whales might hear the plane and somehow be disturbed. Delays in permitting endanger his ability to fly surveys designed to warn ships of the presence of whales. The ships that regularly kill whales are subject to no regulation, and travel wherever they please at any speed through critical habitats of the most endangered whale in U.S. waters. In spite of some fisheries regulations, whales are dying in fishing gear at alarming rates. Fishermen can continue to place lethal fishing gear where it can kill whales, but Kraus cannot test new ideas for whale safe fishing gear, because the environmental paperwork for his research is not sufficient, even after 21 months of delay. Is there something wrong with this picture?

I have also personally had experience with the mad world in which Federal actions block the research needed to protect marine mammals from poorly regulated impacts of human activities. We cannot protect marine life from intense underwater noises until we get better at detecting when a marine mammal or sea turtle is in the danger zone. Recently, there have been promising developments for whale-finding sonars. These are high frequency sonars that work like fish finders to detect echoes from animals close enough to be harmed by unintentional exposure to intense sounds. When these whalefinding sonars reached the point in their design process where they were ready to be tested at sea, I submitted an application to amend my research permit to test how well a whalefinding sonar could detect migrating gray whales. We know how migrating gray whales respond to noise, and we expected little if any behavioral response to the whalefinding sonar. The study was designed with very sensitive methods to detect whether whales avoided the sound source by a hundred meters or so, and we requested permission to "take" the whales by harassment.

The Permit Division of NMFS issued the amendment to my permit in a timely fashion, but only after deciding that the environmental assessment it had conducted for my original permit sufficed, *i.e.*, that the amendment did not require a new environmental assessment. The wording allowing "takes" of gray whales alarmed an animal rights advocate in Australia, who gathered a few small fringe groups to request an injunction against the research the day before the study was to begin. The study was delayed by a temporary restraining order and the entire field team and one of the research vessels in our national oceanographic fleet were tied up for most of the

month planned for the research. In the end, the judge ruled that the amendment to my permit was invalid because the NMFS Permit Division had not prepared a new Environmental Assessment under NEPA not just for my original permit, but for each amendment to the permit. In the end, hundreds of thousands of taxpayer dollars were wasted and we are a year behind in developing more effective methods for monitoring marine mammals.

The NMFS Permit Division of the Office of Protected Resources has just nine personnel and is increasingly inundated. In 2001 they advised scientists applying for a permit to expect processing times of at least 90 days for most marine mammal permits with an additional 135 days for permits affecting endangered species. However, some permits have been subject to greater delays. NMFS currently advises scientists to allow at least 6 months for processing, longer for research involving endangered species. In the cases of my and Kraus' permits, it appears that last minute complaints by a fringe extremist could trigger a "public controversy" condition requiring exhaustive environmental assessments. Given these precedents, I consider that only permits backed by environmental analyses acceptable under NEPA are solid enough to protect research from nuisance lawsuits. My understanding is that it typically takes several months and \$50,000–\$100,000 to produce an Environmental Assessment, and \$500,000–\$1,000,000 and 1–2 years to produce an Environmental Impact Statement. Due to the increasing number of scientific research permits, and the renewed emphasis on NEPA analysis, some permit applications may be delayed much beyond 6 months, with dramatic increases in the burden on the Permit Division and on the applicants.

Congress has in the past few years taken strong steps to fund research to help resolve urgent conservation problems such as declining populations of Steller sea lions, or the threat of extinction for the North Atlantic right whale, and I applaud these actions. Yet both of these research efforts were delayed by more than a year because of delays in the permitting process for scientific research. Recent litigation has highlighted the importance of adequate NEPA analysis in order to issue legally defensible permits. If Congress wants to support critically needed conservation research, it is not enough to fund the science. Congress will also have to mandate significant increases in funding to the Permit Division.

The time required to obtain a research permit has swelled from 3 months to 6 months to 21 months and counting. A very important change suggested by the NRC would be for Congress to specify a fixed maximum time for NMFS to process permits and authorizations. The 1994 NRC report suggested 10 days for initial processing, 30 days for the public comment period, and 10 days to issue or deny the permit. The Permit Division used to use a more liberal 30 days for initial review, 30 days for the public comment period and a concurrent 45 days for review by the Marine Mammal Commission, and 30 days to issue or deny the permit. This totals to 115 days. Additional limits would need to be set for preparation of environmental analyses under NEPA and conducting a public hearing. Yet delays of more than 3–4 months pose a serious burden to research. The only way for the permitting process to proceed in a timely fashion will be for the Permit Division to conduct programmatic environmental analyses for most typical research activities well before applicants request a permit. This additional burden must be achieved while the ongoing flow of permit applications is expedited. If NMFS is to issue timely and legally defensible permits, the permit division and other supporting divisions in the Office of Protected Resources will need additional program staff, with specialists in many areas such as environmental law, NEPA, marine mammal population biology, acoustics, animal health and welfare. Congress will also have to mandate significant increases in funding for the Office of Protected Resources to hire contract personnel or to outsource the analyses required under NEPA and the ESA.

Ironically, it appears that the more serious the conservation problem addressed by a research project, the more likely the project is to be attacked by extremists and delayed or cancelled. One side effect of the permit process is that it personalizes a project in the name of a scientist. When a ship hits and kills a whale, when dolphins die in fishing nets, when a sea turtle is killed in an underwater explosion, the impact is no-fault and impersonal. But when a scientist applies personally for a permit to help solve these problems, he or she is front and center in a very public process. This makes the scientist an all too easy target for uninformed emotional attacks against the bigger problem. The "Tyack permit" is the subject of misinformation in websites from Australia to the UK.

Some animal rights groups have specialized in attacking research; it has become all too easy for less scrupulous groups to move from attacking suffering and pain induced by experiments in captive animals, to raise funds by misrepresenting research directed at helping to protect wild animals from serious threats. Activists have actually tried to sabotage some conservation biology projects. It may reduce

the attractiveness of these cynical *ad hominem* attacks if research institutions or consortia were to apply for general authorizations for different kinds of research, much as other activities that may “take” marine mammals are authorized.¹

The failure of NMFS to prevail in recent challenges to their attempts to exempt the permitting process from further environmental review under NEPA suggests the need for Environmental Assessments or Environmental Impact Statements for each activity that may be permitted or authorized. I cannot imagine that even a newly invigorated Permit Office could perform these analyses for every project, although there is considerable overlap between the permitting process under MMPA and the environmental analyses under NEPA. Given how similar the two processes are, perhaps Congress could specify the categorical exclusion of these permits under the MMPA. Otherwise, the MMPA or regulations might specify programmatic environmental analyses of specific research procedures, such as aerial or vessel survey, tagging, biopsy sampling, sound playback, etc. I must emphasize that many of the most serious problems with marine mammal research permits have not been MMPA problems as much as NEPA problems. As I mentioned above, the Office of Protected Resources will require a considerable injection of funds and highly skilled personnel to be able to oversee the production of the required NEPA documentation.

Suggested unified procedure for authorizing any takes under the MMPA

As my testimony has gotten deeper into the problems with the current regulatory situation, the discussion has gotten further and further from the basic goal of equal treatment of all seagoing activities under the MMPA. I believe that it would be much better if Congress could correct the deficiencies in the MMPA so that one or two simple regulatory processes for authorizing takes could be applied evenly to all seafaring activities. This should be designed to target situations of potential adverse impacts while minimizing the regulatory burden for activities with negligible effect. If a streamlined and more inclusive authorization process were accompanied by better monitoring and reporting requirements, then we would be in a much better position to identify and devote scarce regulatory resources to situations where marine mammals are most at risk from human activities.

Please allow me to sketch an outline of such an approach based upon suggestions from the 1994 and 2000 NRC reports on Marine Mammals and Low-frequency Sound. The 2000 report reviews a suggestion made in 1994 regarding amendments to the MMPA that were adopted in 1994:

The NRC (1994) suggested that the regulations governing the taking of marine mammals by fishing activities should be broadened to include other user groups that might take marine mammals. This concept was incorporated into the 1994 MMPA amendments. The MMPA now requires calculation for each species of a conservative number of animals that might be taken by humans from marine mammal stocks, while “allowing that stock to reach or maintain optimum sustainable population,” called the *potential biological removal (PBR)* level (MMPA, sec 1362[t]; see Appendix C). NMFS is required to tally all human-induced mortality for its stock assessments (MMPA Sec. 1386[a]) and uses this number to estimate PBR. (p. 66)

Here is the concept for regulating takes advocated by the 1994 National Academy Report on Low-frequency sound and marine mammals:

The proposed regime is designed to redirect regulation to focus on human activities with the largest impact on marine mammal populations, scaling the extent of regulation to the risk the activity poses to populations. The proposed regime was initially developed primarily for commercial fishing, but it was designed to allow the inclusion of other “user groups” for PBR. If such a mechanism is adopted in the revised legislation, this committee recommends that Congress and NMFS consider it for regulating most “takes” of marine mammals by research as well. Since the objective of the law is to protect marine mammals, it is difficult to understand applying different, and less stringent, rules to activities that kill marine mammals than to activities that are known to benefit them or to have negligible effects on them. For any population in which harassment

¹ A problem with the language of the MMPA involves the use of the word “take” to cover the potential for an activity to cause slight and temporary changes in behavior. In this age of the internet, it is quite easy for people all over the world to hear of a permit allowing thousands of “takes” of marine mammals. It is difficult for people from many countries to find it credible that the U.S. would regulate the potential for any change in behavior, so it can easily appear that this permit allows “taking” in the normal English sense, which sounds quite drastic. I urge the language of the permitting process be changed to use “take” for lethal take, “injury” for level A harassment, and “disrupt” or “disruption” for level B harassment.

is considered to be a serious risk to populations, taking by harassment may be included in these regulations. Where taking by fishing is considered to have negligible impact compared to other activities, regulatory attention should focus on these more significant risks. (p. 35)

Now we have almost a decade of experience with this PBR regime. The incidental take provisions of the MMPA for commercial fisheries require determination of whether the incidental mortality and serious injury from commercial fisheries will or will not have a negligible impact on marine mammal stocks. Fisheries are categorized as to whether they have frequent, occasional, or remote likelihood of causing mortality or serious injury, and each fishery receives an authorization for incidental takes subject to conditions. As long as a fisher registers with this authorization process, complies with the conditions, and reports any takes, s/he is exempt from the prohibition against taking.

This regime for regulating fisheries takes that may kill animals has been quite successful in highlighting situations where populations are threatened by fishing. Fishers in low impact fisheries have a simple and streamlined regulatory process, and regulation ramps up corresponding to the threat, up to closing down fisheries that threaten the survival of marine mammal populations. However, this regime ignores effects of harassment, and is not systematically organized to include takes such as vessel collision, explosions, etc.

The MMPA has a complex tangle of different authorizations for taking marine mammals. Each kind of take authorization has had successes and failures. The basic goals of the Act clearly have not been well served by such different standards for regulating takes for different activities. As the NRC said in 1994, "it is difficult to understand applying different, and less stringent, rules to activities that kill marine mammals than to activities that are known to benefit them or to have negligible effects on them." The only case that I think justifies a lower level of regulation involves takes for scientific research that enhances the survival or recovery of species or stocks. After three decades of experience, I believe that the Act would be much more likely to meet its goals if it condensed all incidental take authorizations to one process that incorporates the best features of PBR and the best features of the other mechanisms.

I suggest that different user groups that may take marine mammals could either voluntarily form together or be designated by NMFS. The list of user groups must include all activities that may take marine mammals. Such a list would have to include all vessels large enough to be registered in the U.S. that operate in waters inhabited by marine mammals. Either the user groups or NMFS should be required to prepare a Programmatic Environmental Impact Statement, an Environmental Assessment, or some simpler form of analysis depending upon NEPA criteria, including whether takes, including harassment takes, were anticipated to be frequent, occasional, or occur with a remote likelihood. After this stage, some activities might be judged so low risk that they would just need to specify when the user registers the vessel, an obligation to report all takes. For activities judged at higher risk for takes, each vessel or member of the user group could apply for incidental take authorization similar to that used now by commercial fisheries, but including takes by harassment. Before embarking to sea, each user in a high impact activity could be required to notify NMFS where they are going and what they plan to do. All users should be required to report any takes, including level A or B harassment takes, with strict requirements for prompt and complete reporting. For activities that might cause harassment takes beyond the range of detection of the vessel, a monitoring program could be established to study animals at different ranges from the activity in order to better estimate the number of harassment takes.

My understanding of the PBR process is that it only counts lethal takes or injury so serious that it poses a risk of death. For the purposes of incorporating harassment takes into this regime, NMFS could start by just requiring complete and accurate reporting of all potential takes, including any disruption of behavior. The inclusion of any disruption of behavior should not be interpreted to signify that all of these constitute "takes" under the MMPA. Rather, accurate reporting of behavioral disruption could be used to help identify what exposures pose a risk of adverse impact. Ultimately, the significance to the population of any take is the effect on the demography of the population, the ability of the population to grow or remain a healthy size. I strongly encourage Congress to adopt wording requesting that NMFS attempt to account for harassment takes conservatively in terms of just the same demographic effects as lethal takes. This is currently a challenging scientific problem, but the correct wording would stimulate the appropriate science, while focusing attention on the critical issue of keeping marine mammal populations healthy. As

I discuss more fully in the last section of my testimony, the best way to do this is to define harassment in terms of biological significance of the take.

Ultimately a demographic accounting of harassment takes would require population modeling that relates the dosage of exposure to harassment to population parameters. There has been great progress in this kind of population modeling in the past decade, and the PBR process has forced NMFS to sharpen its stock assessments for marine mammals, including summarizing all known lethal takes. However, right now the critical analyses could not be performed for harassment takes because we know so little about exposures of marine mammals to harassment. A critical aspect of the PBR regime is that it exempts registered fishers from the prohibition on taking as long as they accurately and fully report any takes. A similar clause for all vessels that may be involved in harassment would ultimately give scientists the data needed to regulate harassment in terms of biological significance of impacts to populations. As in the terms of permits for scientific research, the user should report any observed disruption of behavior, but the regulations should be clear that not all of these will ultimately be considered “takes” by harassment.

A timely reporting requirement may also make it easier to prosecute cases of intentional harassment, as failure to report would violate the terms of the exemption.

This kind of program would allow NMFS to identify situations where

- A stock was at risk from a particularly high number of takes.
- An area or activity caused a high number of takes for a variety of species.
- There were particular hot spots of takes.
- The cumulative takes pose a risk to the population

Where the sum of takes, lethal, injury, or harassment, pose a risk to a population, this regime should require a take reduction team to reduce the problem. This kind of regulatory regime would reduce the burden on activities that pose little risk, while focusing attention on species, areas, or activities that pose the greatest risk to the most endangered populations.

Some may be concerned that the regulatory process I sketch out would lead to reduced protection. It would certainly streamline the regulatory process and make it more predictable for most activities, but I agree with the National Academy (2000) report on Marine Mammals and Low-frequency Noise that such a change would, if done correctly, increase protection from the status quo:

The Committee also suggests that activities that are currently unregulated, but which are major sources of sound in the ocean (*e.g.*, commercial shipping) be brought into the regulatory framework of the MMPA. Such a change should increase protection of marine mammals by providing a comprehensive regulatory regime for acoustic impacts on marine mammals, eliminating what amounts to an exemption on regulation of commercial sound producers and the current and historic focus on marine mammal science, oceanography and Navy activities. (p. 72)

This change would be all the more effective if it was not limited to acoustic impacts, but included all sources of takes including harassment into an integrated workable regulatory structure. The current MMPA has unbalanced criteria for authorization, allowing some fisheries to kill animals with no requirement beyond reporting, while having no procedure available to other activities to authorize more than a small number of insignificant harassment takes. This does not meet the conservation goals of the Act.

During the past several years, there have been efforts to address the very real problems with the MMPA by developing new exemptions for specific activities such as military readiness. I do not think that complicating the Act by creating yet another special exemption is the best answer. I strongly urge Congress to respond to the problems highlighted by DOD by trying to fix the underlying flaws in the regulatory procedures of the MMPA before granting a special exemption that does nothing for marine mammal conservation and leaves many other producers of sound in the sea with no way to meet the regulatory requirements. If done correctly, the regulations might be able to include all activities in a streamlined regulatory approach that focuses attention on those situations that pose the most risk to marine mammal populations. Ideally this should include a common mechanism for dealing with harassment takes in fisheries as well as other activities.

Suggested rewording of incidental take authorization for effects of noise.

While I believe there is an opportunity to improve the MMPA by reducing the maze of take authorizations, this may be politically too difficult to achieve this year. If Congress cannot achieve a common mechanism for authorizing takes, I would ad-

vocate simple changes to the existing incidental take authorizations in sections 101.a.5.A and 101.a.5.D that I believe would make them appropriate for regulating acoustic impacts. When the MMPA was first written, it emphasized takes in commercial fisheries. Certainly no one at that time was thinking about whether the regulatory process would work for issues such as incidental harassment takes resulting from unintentional exposure to noise. Nor was there much experience with issues under NEPA of whether the impacts of entire activities needed to be evaluated together, or whether it was better to authorize each time a “take” was possible.

Since the MMPA was passed, many studies have demonstrated that marine mammals respond to ships, dredging, icebreaking and construction, and sound sources such as pingers, air guns, and sonars. Most of these sound sources are currently unregulated simply because NMFS chooses not to enforce the prohibition against taking marine mammals by harassment. I doubt that many of these activities could find a regulatory procedure under the current wording of the Marine Mammal Protection Act that would allow activities with negligible impact while controlling those that might have an adverse impact. As has been pointed out by each of the three National Academy reports on this topic, the dominant source of manmade noise in the ocean is the propulsion sounds from ships. Yet this has not been regulated by NMFS. As the National Academy 2000 report *Marine Mammals and Low-frequency Sound* put it:

If the current interpretation of the law for level B harassment (detectable changes in behavior) were applied to shipping as strenuously as it is applied to scientific and naval activities, the result would be crippling regulation of nearly every motorized vessel operating in U.S. waters. (p. 69)

One response to this conundrum is for each activity to seek special exemptions if their activities become targets of regulation. However, the National Academy 1994 report *Low-Frequency Sound and Marine Mammals* discouraged that approach:

“However, it seems unreasonable that an exemption from the “take” prohibitions of the MMPA should be available for some human activities, including some that kill marine mammals, without being available for other human activities whose goal may include the acquisition of information of potential value for the conservation of marine mammals.” (p. 38)

The first two reports of the National Academy of Sciences on marine mammals and low frequency sound specifically suggest a broader solution to this problem: removing the requirements for small numbers of takes, while retaining a criterion of negligible impact:

Reword the incidental take authorization to delete references to “small” numbers of marine mammals, provided the effects are negligible. (p. 39)

Low frequency Sound and Marine Mammals (1994)

In addition to making the suggested change in the level B harassment definition, it would be desirable to remove the phrase “of small number” from MMPA section 1371(a)(5)(D)(i). If such a change is not made, it is conceivable under the current MMPA language there would be two tests for determining takes by harassment, small numbers first, and if that test were met, negligible impact from that take of small numbers. The suggested change would prevent the denial of research permits that might insignificantly harass large numbers of animals and would leave the “negligible impact” test intact. (p. 71)

Marine Mammals and Low-frequency Sound (2000)

My understanding of the judge’s ruling in the legal challenge to operation of the SURTASS LFA sonar, *NRDC vs Evans*, is that the judge ruled against the interpretation followed by NMFS that “small” can be interpreted in terms of population size, and exactly following the fears of the National Academy panel, ruled that the current MMPA language does require both negligible impact and small numbers, where the meaning of the word small could not be interpreted in terms of size and status of populations.

The restriction in the MMPA authorizations for incidental takes to “a specified geographical region” may also rule out this authorization process for most impacts of noise. If “specified geographical region” is taken to mean areas small enough to involve the same assemblage of species and oceanographic conditions, the requirements of the incidental take authorizations would be incompatible with the NEPA requirement to consider all possible uses of a system. Many sound sources are on a large number of vessels, each of which may cross the ocean in weeks. Many marine mammals also migrate thousands of miles through very different habitats. This makes it difficult to specify a geographical region for a whale that may be in the

Caribbean one day, and off New England a few weeks later. I do not think that the wording specifying a geographical region is easily reconciled with the potential numbers and movements of both the animals and the noise sources.

The propulsion sounds of ships elevate the ambient noise over the world's oceans, and this global impact is likely to reduce the ability of whales to detect calls at a distance. I see no process by which such takes could be authorized under the current wording of the MMPA. Depth sounders and fish finders have sounds that do not carry as far, but they are used by tens of thousands of vessels. These sounds have the potential to disturb marine mammals, and therefore may take animals by harassment, but did Congress intend to require authorization for each user? How far could a vessel go before its takes move out of the "specified geographical region?" Oceanographic research, much of which uses motorized vessels and uses sound as a tool to explore the ocean, also has a global scope, and may be difficult if not impossible to authorize under the current regulatory procedures.

The House of Representatives has proposed changes in wording of the sections of the MMPA for taking and importing marine mammals in HR 1835. My understanding is that the primary effect of these changes is to remove the conditions of small numbers and specified geographical region for the incidental take provisions. I believe that as long as a sharp focus is maintained on the issue of negligible impact, these changes would make the process work for effects of noise on marine mammals, while still protecting marine mammal populations from adverse impacts. Since millions of sources such as depth sounders and the propulsion noises of every motorized vessel could cause harassment takes under the current definition, I believe that it will be essential for the process to authorize general activities, rather than individual vessels or sound sources. This is incompatible with restricting the authorization to "small numbers," if this is taken literally to mean just a few individuals, or "specified geographical region," if this is taken to mean small areas.

Definition of harassment

Until the last paragraph, I have kept my testimony quite general, but I have some specific comments on the definition of harassment in the current MMPA and the changes suggested by the Administration and House of Representatives in HR 1835.

The current definition of level B harassment in the MMPA is:

"has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The 1994 NRC report on Low Frequency Sound and Marine Mammals succinctly reviewed the problem of how harassment has been interpreted under the MMPA:

Logically, the term harassment would refer to a human action that causes an adverse effect on the well being of an individual animal or (potentially) a population of animals. However, "the term 'harass' has been interpreted through practice to include any action that results in an observable change in the behavior of a marine mammal. . . ." (Swartz and Hofman, 1991). (p. 27)

The 1994 NRC report goes on to note that many minor and short-term behavioral responses of marine mammals to manmade stimuli are simply part of their normal behavioral repertoire. There is clearly a need for some standard of negligible effect, below which a change in behavior is not considered harassment.

The change in the definition of level B harassment proposed in HR 1835 is:

"disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered."

As a biologist who has studied the behavior of marine mammals for more than 25 years, I find this wording confusing, and I do not see how it addresses the problem identified by the NRC. The last phrase added to the definition does add a criterion of significant alteration. However the point of the NRC reports was *biological* significance, a disruption that could have an adverse impact. My dictionary defines significant as "likely to have influence or effect." The addition of the word "significant" in the new definition therefore does not give the same standard as suggested by the NRC. As our techniques to study marine mammals have grown in sophistication and sensitivity, it is now possible to demonstrate statistically significant alerting or orienting responses that in my opinion fall well below the negligible impact standard.

I find the addition of the word "abandoned" particularly confusing in the new definition. It certainly makes sense to add a criterion for abandonment of critical habi-

tat, but what does this wording mean for behavior patterns? A sperm whale or elephant seal can dive for an hour or more, but any marine mammal that abandons surfacing behavior cannot breathe. If it abandons surfacing for more than a few hours, it is certainly dead. If a sperm whale group is sheltering a young calf from a killer whale attack, even a momentary abandonment of the behavior could be lethal. Calves may be able to survive for days or weeks if their mother abandons nursing, and many whales could survive for years without feeding, but what is the time period implied by "abandon." My understanding of "abandon" is that it means a permanent change. By this definition, the "abandonment" wording turns level B harassment into a lethal take. Far from distinguishing negligible from potentially significant effects, it muddies the waters further.

Another problem with the use of the term "abandon" is that I take it to mean "giving up"—a 100 percent cessation of an activity. Yet since the definition of harassment also applies to stocks, this definition is not conservative enough for actions that may affect a large portion of a stock. For example, suppose an activity caused a 50 percent reduction in foraging rates in a majority of the population, or caused animals to be 50 percent as effective in finding a mate for breeding. Such reductions would not "alter" the form of the behavior, nor would they meet an abandonment criterion, but few populations could sustain such changes on a long term basis.

I would like to take this opportunity to reiterate the suggestion of the National Academy of Sciences second report (2000) on Marine Mammals and Low Frequency Sound on the definition of level B harassment:

"NMFS should promulgate uniform regulations based on their potential for a biologically significant impact on marine mammals. Thus, level B harassment should be redefined as follows:

Level B—has the potential to disturb a marine mammal or marine mammal stock in the wild by causing meaningful disruption of biologically significant activities, including, but not limited to, migration, breeding, care of young, predator avoidance or defense, and feeding.

The Committee suggests limiting the definition to functional categories of activity likely to influence survival or reproduction. Thus, the term "sheltering" that is included in the existing definition is both too vague and unmeasurable to be considered with these other functional categories." (p 69)

This definition was written by scientists and may require some rewording to fit legal and legislative requirements. But if the definition of harassment is to be changed, it should be done so in a way that makes biological sense and that corrects the need for a negligible impact standard. I do not think that the changes proposed in HR 1835 for the definition of harassment succeed in this task. I urge the Senate to consider using the definition of harassment suggested by the National Research Council in any amendments to the MMPA.

Conclusion

Madam Chair, I sincerely appreciate your attention to this difficult and complex issue. There are real problems with current implementation of the MMPA in our changing environment. However, I am convinced that Congress and the responsible Federal agencies can make real progress to create permitting and authorization processes that are more predictable and efficient, while improving the protection for marine mammals from adverse impacts of human activities.

Thank you, and I look forward to your questions.

PREPARED STATEMENT OF KONRAD S. URI

I am providing this written testimony to follow up on my letter this past December to each member of the Commerce Committee as well as each member of the Appropriations Committee opposing the "Two Pie" rationalization plan as proposed by the North Pacific Fishery Management Council (NPFMC).

I am a lifelong fisherman who has participated in the bottomfish (trawl, longline & pots) fisheries off the coast of Washington and Alaska for over 50 years. I also have been a crab fishermen for over 35 years, harvesting and processing Red, Golden, & Blue King Crab as well as Opilio and Bairdi tanner crab; currently, I fish pacific codfish by longline in the Bering Sea/Aleutian Islands area about 6 months out of the year.

I have seen the development of the Bering Sea/Aleutian Island fisheries from the 1960s, dominated by foreign vessels, to present with the U.S. public resource harvested by American vessels. I was active in supporting and implementing the origi-

nal Magnuson Act, as well as many other fishery management, allocation, political issues over the years.

With the advent of the American Fisheries Act, and now the proposed Bering Sea Aleutian Island Crab Rationalization plan, I am discouraged with the direction of the government to rationalize the various fisheries of the North Pacific. If you allow the NPFMC's proposed crab rationalization plan to move forward, you will award the processing sector with a monopoly.

Providing the processing sector with "Processor Shares" violates the antitrust laws of our land, grants the processing sector an unfair advantage over the independent fishermen, is adverse to the position of all the other Fishery Management Councils across the Country, provides quasi ownership interest in the public's resources under the control of foreign owned companies, goes against all but one Alaskan communities' resolutions, and sets a very dangerous precedent which I fear will be applied in other fisheries in the future.

I therefore ask the Commerce Committee to reject the proposed plan and send it back to the NPFMC for revamping. Beyond a buyback program, the fishery should be rationalized at the harvester level, with no "two pie" and/or "processor share" provision.

ALEUTIAN PRIBILOF ISLAND COMMUNITY DEVELOPMENT ASSOCIATION
Juneau, AK, May 19, 2003

Hon. TED STEVENS
United States Senator
Washington, DC.

Re: Crab Rationalization

Dear Senator Stevens:

There is little dispute that Alaska's Bering Sea crab fisheries are in crises. The combination of low guideline harvest levels, generally weak ex-vessel and wholesale prices, and overcapitalization in both the harvesting and processing sectors have brought the crab industry and many of the communities that depend upon it to their knees. Many of the participants face bankruptcy if nothing is done and, for some, it may be too late already.

Crab rationalization is the only remedy available. Status quo is not an option. The design and implementation of any fisheries rationalization scheme is very controversial. That is because there are winners and losers. There is no way around that. In this case, most of the controversy swirls around the creation of crab processor quota shares.

Like Kodiak, we do not particularly like processor quota shares. From our perspective, however, they are a necessary ingredient to make crab rationalization work. Without processor quota shares, the political will within the industry as a whole that is necessary to bring about crab rationalization does not exist. Therefore, without processor quota shares, there is no crab rationalization and the industry may be doomed. The impact upon coastal communities in that scenario is unacceptable.

The logic behind the Council's crab rationalization program is reasonable. Effort in both the harvesting and processing sectors need to be reduced so that the inefficient and wasteful race for crab is eliminated. This presumably, will bring about some semblance of stability to the industry. The industry consists of three parties: harvesters, processors and communities—the program must be designed so that each component experiences stability, otherwise chaos results.

Crab harvesters argue they need quota shares to protect their capital investment by allowing them to fish crab wisely and efficiently. In that manner they are able to survive financially.

Crab processors argue that if harvesters receive quota shares, processors must as well. Otherwise, the processors' ability to compete and survive in an industry they have participated and invested in for decades disappears. They believe they need quota shares to protect their capital investment.

Coastal communities dependent upon crab offer the same rationale. Without adequate community protection in a rationalization program, the capital they have invested in infrastructure is wasted and the economic foundation of their community is destroyed.

All three legs of the stool have the same legitimate need for stability. And like any three legged stool, this one will tilt at best, and collapse at worst, if one of the three legs is not treated equally.

APICDA's focus during the North Pacific Fishery Management Council's crab rationalization process has been to protect the interests of our member communities. Initially, we proposed that all of our communities, including those that had never processed a crab, be allowed to construct crab shore plants and purchase crab without requiring crab processor quota shares. The non-APICDA communities argued against that approach, reasoning that every pound of crab that would go into our non-historic crab processing communities would be stolen from a community dependent upon crab processing. We found that was a reasonable argument, particularly during times when crab quotas are low, and agreed to drop our proposal. Forthwith, our focus was to ensure that the crab processing history earned in our communities (St. George in particular) would stay in that community.'

Further, we argued that there should be a limit on the amount of processor quota shares, with the limit tied to the size of the crab quota; crab harvested above those amounts could be delivered to any community and any processor regardless of whether or not they have processor quota shares. Our reasoning was simple: when crab quotas are above a certain level, there is plenty of crab to address both the historic crab processing communities' needs and to allow for other communities and processors to participate. That approach has been adopted by the Council.

We, as well as other communities argued for a variety of other community protection provisions. These provisions included: that communities in which processor quota shares are allocated have the right of first refusal to purchase processor quota shares from a processor who is selling; a prohibition on the transfer of processor quota shares away from a community during the first two years of the program; and, a host of other community protection mechanisms. All have been adopted by the PM.

We understand the concerns voiced by the City of Kodiak. One of our member communities is St. George. St. George is a crab dependent community. Unlike Kodiak, there is no other commercial fishing in St. George except a small amount of halibut. There has been no crab processing in St. George since 2000 due to the collapse of the opilio stocks. The City of St. George has lost 98 percent of its revenues since 2000, and is near default on its bond obligations.

It is disturbing to us to contemplate the future of St. George in the absence of the NPFMC's crab rationalization program. St. George will flounder. Unlike many other communities, St. George does not have a shore based seafood processor, nor does it have access to salmon or groundfish. St. George is essentially 100 percent dependent upon crab. Without processor quota shares and without crab rationalization, there is no fishery-related future of consequence for the community. There is nothing else of economic significance to fall back upon.

We understand very well how controversial and difficult crab rationalization is. We understand the risks and the pitfalls. But we are standing on the abyss with status quo, and cannot survive the fall if rationalization does not happen soon.

Sincerely,

LARRY COTTER,
CEO.

Cc: APICDA Board of Directors

PREPARED STATEMENT OF MICHELE LONGO EDER, F/V MICHELE ANN

Hon. JOHN MCCAIN, Chairman
Committee on Commerce, Science, and Transportation

Dear Mr. Chairman, Senators Wyden and Smith, and Members of the Committee:

I am a fisherman's wife from Newport, Oregon, a town of about 10,000 people on the central Oregon Coast. My husband is a commercial fisherman, and has been fishing for 30 years. He owns his own boat, and has a crew of 3 or 4 men. Usually, he fishes for Dungeness crab and sablefish. We also have permits to fish for pink shrimp, halibut, salmon, and albacore tuna.

Let me state from the outset: We are opposed to fish processors being allocated quota or shares, or in any way be guaranteed a certain amount of, or access to fish that fishermen like my husband and his men go to sea to catch.

Now let me tell you why. The only way our crewmen can earn a living, and the only way our business can make a profit and continue to survive in this industry, is to get the very best price for our fish that we can possibly find.

I can't quote statistics per se, but I can tell you that in the last 15 years, on the West Coast of the United States, there has been an absolute collapse in the number of independent fish processors that a fisherman can sell their fish to. In towns where there had once been booming bayfronts, now there is but one or two proc-

essing plants, at most. For example, in Newport, OR, as recently as 15 years ago, there were 5 different processors that competed for product from fishermen. Each plant had to provide good service, in terms of efficient unloading and quick turn-arounds, fresh bait, quality ice, and most of all COMPETITIVE PRICES or they wouldn't get the fish.

Today, for a variety of reasons, there is one fish processor that processes the majority of West Coast bottomfish and crab, and that is the Pacific Seafood Group.

Although I can congratulate them on their success for being an efficient business, buying up money-losing plants and shutting them down and generally cornering the market, what it has done to the family fishing business has been devastating. Other buyers are at risk of losing their shirt if they offer fishermen a better price for their product, for the largest processor can, and does, immediately sell at a lower price in order to recapture any market share they may have lost. This happens season after season, fishery after fishery, and year after year.

Fishermen have it hard enough as it is, trying to find new and better markets for their fish on a boat by boat basis, without GOVERNMENT giving to FISH PROCESSORS another tool that would allow them to further control and depress prices-and the tool that I am referring to is "processor quotas" or "processor shares."

In my opinion, processor quotas have absolutely nothing to do with either fisheries management, safety, or conservation-the purposes for which we think government resources and laws should be directed. Instead, quota shares for processors are an anti-competitive measure that will make the cost prohibitive for new entrants into the processing business, and further, will force fishermen to sell only to those that receive an initial allocation or have the capital resources to buy processor quota.

The work that my husband and our men do is brutal. I can't begin to tell you what our life is like. I don't pretend to know what the rest of the Nation needs, but the last thing our West Coast fisheries need is the Federal government entwined with fish processors to give them an even stronger control over the prices paid for our fish. Please—don't make our proud fishing communities nothing but "company towns."

Thank you for the opportunity to offer this testimony.

Sincerely,

MICHELE LONGO EDER.

PREPARED STATEMENT OF DENNIS PETERSEN

Senator JOHN MCCAIN, Chairman
U.S. Senate Committee on Commerce, Science, and Transportation

Dear Senators:

I've been a participant in the Bering Sea King & Tanner crab fisheries from 1963 until 1982. In those years I served in all capacities aboard my own & other vessels. I also was a board member of the Alaska Marketing Association representing vessel owners & crab fishermen in price negotiations with all processors who bought crab from all Bering Sea boats. During those years, there were few conflicts of interests between being a fisherman & being a processor. Today that line has become inexplicably blurred.

Processors own a very high percentage of the crab catcher boats & in any price negotiating process will ultimately dominate that process with independent vessel owners finding their voices being stifled by those processors who will ultimately buy all the crab. The vessel owner who wouldn't go along with his processor would stand an excellent chance of being cast adrift with no market: truly an economic disaster for the small independent fisherman who risks all.

Further, in the only group representing Seattle vessel owners & fishermen, ACC, there is a makeup, I understand, within that association whereby a small group who have ownership in multiple vessels, including a very large crab processor, which dominates that association on whatever position might come up for a vote. Consequently, that group is highly suspect as to its loyalties within the Seattle crab fleet & will probably suffer a real loss of membership for their support of the two (2) tier crab rationalization plan. Yet, politically, they are given credence for being the ultimate voice of the Seattle fleet (which represents roughly 70 percent of the Bering Sea crab fleet). Not so . . . their testimony should be taken for what it is . . . completely tainted & not representative of a majority of the Seattle fleet.

Obviously, I completely oppose the two tier crab rationalization plan even though I am completely retired from the industry. It is a product of big money influencing decisions where the men who work in the world's most hazardous profession will

loose. Do not be swayed by the big moneyed processor advocates who have dominated the North Pacific Fisheries Council's decision making process as regards this super important issue. Please reject this abomination!

Respectfully submitted,

DENNIS PETERSEN.

Cc Senator Maria Cantwell

TESTIMONY OF VICTOR SMITH

May 20, 2003

To:

U.S. Senate Committee on Commerce, Science and Transportation

Senator JOHN MCCAIN, Chairman

Re: Crab Rationalization Hearings

Dear Senator McCain:

Congress should not grant exclusive rights to a few corporations on the crab buying side because it also affects their price-making powers over other species, too. As a salmon fisher, I am concerned about negotiating against networks of offshore companies and global affiliates. Their abusive "transfer pricing" practices that shift profits offshore to lower fish prices and avoid U.S. taxes should be more closely examined, for all species.

There was talk in Petersburg, AK., after Senator Stevens met with Icicle Seafoods fishermen there last June, that Processor Quota Shares were assured for Pacific Cod too. And I am most concerned because some are already promoting a non-competitive "salmon rationalization" scheme, as well.

Fishers are also worried about systemic conflicts-of-interest plaguing the State of Alaska, the North Pacific Fishery Management Council, and the fishers own associations. These comprise the power base for Crab Rationalization and other policy-making. I have information on these conflicts of interest that I believe would convince you that at best there is only the appearance of a power base, and that that appearance was illegally acquired and has been used to defraud the public.

This thinly veiled appearance of fishermen's support for legislation that will be harmful to fishermen is the result of a long campaign of intense opinion shaping and silencing led by conflicted leaders of the Alaskan fishing community.

Opposition has been silenced by leaders outright misrepresentations of memberships opinion, as well as leaders preempting association votes by publicly announcing association positions without polling their members. They have also been involved in passage of legislation and policy making detrimental to fishermen without fishermen's approval. As a result, millions of dollars have been taken out of the harvesting side of Alaska's fisheries.

Members of these associations (United Fishermen of Alaska, South East Alaska Seiners Association, Puget Sound Vessel Owners Association, and possibly others) appear to have been engaged with Icicle Seafoods, Trident Seafoods, Norquest Seafoods, and possibly other processors, as well as some Joint Legislative Salmon Industry Task Force members, and others, in a pattern of mutual favoritism.

Conflicted members of these associations appear to have:

- (1) Assisted processors in attempts to acquire permanent Processor Quota Shares and market exclusivity.
- (2) Assisted processors in transferring more production costs to fishermen, lowering prices, and reducing public benefits derived from fisheries resources.
- (3) Helped processors elect and support politicians seemingly willing too exchange support for favors.
- (4) Proposed and led a legislative agenda favoring processors that ignores real solutions for fishermen and fishing communities.
- (5) Refused to protect Alaska's fishermen and wild salmon from pressure from fish farmers and other interests and in some cases even supported others interests.
- (6) Engaged in actions to undermine fishermen and public support in a fishermen's class action court case looking into charges of price fixing in Bristol Bay.
- (7) Violated association bylaws, misrepresented associations' positions, and created the appearance of fishermen's consensus where none existed.
- (8) Discriminated against non-resident Alaskan fishermen.

- (9) Used libel, character assassination, and intimidation to silence opposition.
- (10) Engaged in lobbying efforts that undermine public support for fishermen.
- (11) Used public money to fund some of their efforts.

I believe these abuses and more have been going on for at least the last several years. I urge you to pay extra close attention to the voices of opposition coming from the few fishermen that still have the will to speak out. If I may, I would like to forward you this information. We (fishers) have been left behind on our small business rights.

It is a matter of too many boats currently chasing too few crabs, and fishermen not receiving a fair percentage of the retail price of their product. The \$100 million vessel buyback program should lessen pressure on crab fisheries, without also forcefully collectivizing fleets and forever misbalancing market powers.

To institute the crab "rationalization" plan will merely stifle competition and innovation, as well as lead to even lower prices for harvesters. Concentrated major grocers do not yet control assigned collectives of American farmers, who are then forced to supply products only to those particular stores. So, should crab harvesters not also share the same antitrust protections as other fishing fleets and businesses?

We hope that you do not grant processor Quota shares and even think about asking the GAO to study Alaska's economic structure more thoroughly, so that we all understand more about the overwhelming power foreigners and unchecked corporate greed now have in the U.S. seafood industry.

I urge you to ground-truth the testimony you hear by listening carefully to all sides. Thank you for considering protecting my independent, small business and our community concerns.

Sincerely,

VICTOR SMITH.

TESTIMONY OF VICTOR SMITH

May 25, 2003

To:

U.S. Senate Committee on Commerce, Science and Transportation
Senator JOHN MCCAIN, Chairman

Re: Crab Rationalization Hearings

Dear Senator McCain:

I have read some of the presentations made to your Committee at the Hearing on the 20th. I was not surprised to see that Senator Murrury was involved. I had predicted her involvement last year when I first learned of her and Senator Stevens working together on the Boeing tanker deal. There was an article on the tankers in the Saturday *Seattle Times*. (Right along side an article on the tax cuts.) It was also interesting to hear Rush Limbaugh belittling you on Friday on his program. I think I know what's involved there and I believe you're being charitable referring to the Boeing Deal as a handout.

I don't think the timing of these events is a coincidence and I believe there's linkage with the Crab hearings. I believe Patty Murray is Senator Steven's new consensus building WA. Democrat. I doubt she knows much more about crab than she's been told. Not so with Kevin Duffy.

Mr. Duffy was the fishermen's associations' choice for Commissioner of Alaska Department of Fish and Game. Despite the fact that he'd previously voted for Processor Quota Shares on the Council. Note in the following e-mail how David Bedford, who was then General Manager of South East Alaska Seiners Association and is now Deputy Director of ADF&G, denies endorsing PQs and denies that SEAS support of Mr. Duffy was support of PQs.

Now look at where Mr. Duffy is. He is no longer just one of eleven unanimous voters on the Council; he is now the expert presenter of the plan. And Gov. Knowles is no longer pulling his strings, so who is manipulating him this time?

It was wrong how Mr. Duffy acquired fishermen's support to become the processors embedded Commissioner, and his actions now prove this. These people and the action they are proposing is a fraud. Mr. Bedfords record of misdeeds goes back at least a year, and I have similar material on several other key proponents of this plan.

Have you received any testimony from Oliver Holm, of Kodiak? If you have not, I would like to forward you letters from him that outline how United Fishermen of Alaska misrepresented fishermen's support to Senator Stevens two years ago. I

have also sent his material to the Dept. of Justice. Have they forwarded any of it to you?

This is an incredibly flawed process, and an incredibly involved one. The Bay Case was no test of this collusion; in fact, the high level tampering in the press highlighted it. Do you have any advise that might help me decide what to do with this information? I've received a number of threats that have me wondering now about what I should be doing.

VICTOR SMITH

Original Message

From: The Smiths

To: Gordon Blue

Sent: Friday, May 23, 2003 5:21 AM

Subject: Re: CR Hearings (2)

Gordon-

Remember that Sen. Stevens voiced almost the exact same concerns last year when he announced the Senate wouldn't be taking it up and he's still at it. We predicted Sen. Murray would be involved in this last fall and here she is. I don't think they are any less sure about what they want. Stevens has got a huge investment in Murray. I agree about the importance of the Bay Case but am pessimistic about the outcome. Fingers are crossed though. In the euphoria of a win the processors might be given just about anything. Kevin Duffy? Read the following e-mail:

This e-mail (following) was received March 7, '03, from David Bedford, then SEAS General Manager.

Dave-

If, as you say, SEAS has never supported processor quotas, why are we supporting for commissioner Kevin Duffy, who voted for them?

You confuse support for the individual with support for one specific action. SEAS believes that Kevin will be responsive to the concerns of commercial fishermen, particularly seiners, as he has been as Alaska's Commissioner to the Pacific Salmon Commission and Deputy Commissioner for Fish and Game. Therefore SEAS supports him. Note also that Kevin supported processor shares in the crab fishery, a fishery with little direct relevance to the mission of SEAS, because the Governor, his boss, instructed him to do so. Further you should recognize that the Governor arrived at this stance because his door was closed to commercial fishermen. The crucial issue now is whether we are in a position to work with and influence the current administration. We are.

Why are we marching in lock step with the UFA, who's president last spring, mischaracterized the UFA boards position as being consistent with processor quotas, just as he relayed this same message to Senator Stevens?

I don't know what Bob told anyone but I do know that UFA's position on the AFA with its processors quotas is that the organization backs the North Pacific Council and opposes having resource management or allocation done by the Congress. As I recall, the NPFMC voted unanimously for processor quotas, including the commercial fish representatives, one of whom is an AMCC member from Kodiak.

Weren't you one of the UFA exec committee who voted to take no action on the UFA boards vote to oppose processor quotas?

Victor, the truth of the matter is that some crab fishermen supported processor quota and some opposed them. A UFA board member sneaked a proposal on processor shares in without giving any background materials to the board and without alerting the affected crab fishermen. My position was neither in favor nor opposed but rather that there should be a full and fair and informed discussion before UFA took a position against one group of fishermen or another. I wanted to talk to the fishermen before I voted either for or against a resolution that affected them.

Wasn't SEAS board advised not to interfere in the crab rationalization plan?

Not only no but Hell No.

The Gilcrest Amendment, which we weren't opposing, was about considerably more than the crab fishery as everyone involved knows.

You are wrong that everyone knows what the Gilcrest amendment is about. I don't. I take it from the context that it is the legislation that would permit processor quotas in the Bering Sea crab fishery. Is it an amendment to Magnuson-Stevens? There are a thousand things a day that I don't have time to oppose, or even find

out about. If every seiner paid his dues SEAS could afford another one of me and there might be time to get to North Pacific Council and Federal waterfisheries issues that have no immediate relevance to the seine fishery.

Why did we support a Governor who wouldn't take a position against PQ's?

There are no PQ proposals for the seine fishery or any other salmon fishery. If it happens, SEAS will be in the thick of it. The governor does support the economic prosperity of the fishery and the coastal communities. Bread and butter issues seem to resonate with the fleet right now.

Why wasn't SEAS calling its members to action last spring when this issue was before congress?

What issue? The crab fishery? Gilcrest? Processor quotas? How much free time do you think I have? Do you have any idea how much unpaid time I put in for SEAS and for you as a fisherman in the seine fishery? How much more do you want? If you want my limited time spent on the Bering Sea crab fishery instead of the Board of Fish or the permit reduction program or the MMPA law suit or state fishery legislation or the Federal subsistence program or any of the dozen other things I keep tabs on, get the board to tell me to shift my focus from the seine fishery to the North Pacific Council.

Actions speak louder than words. Please explain why one should interpret our record on PQs as one of non-support.

Because we never supported them.

Instead of asking me to prove a negative why don't you prove the assertion you make. Show me one printed word, other than spurious e-mails from Kodiak, where SEAS supported processor quotas. Never happened. All there is innuendo from one disaffected UFA board member who tried to sneak a resolution past the UFA board without full discussion—a resolution that was opposed by some fishermen in the relevant fishery, the proposal was advanced by the representative of an aquaculture association—a group with no connection whatsoever with the crab fisheries. It sure looked like a personal agenda to me so I felt the need to discuss the matter with some crab fishermen.

How would you like it if UFA took a position on the Southeast seine fishery without letting any seiner know? Is that the kind of conduct SEAS should support in UFA, policy making by ambush?

How do you claim SEAS opposes fish farms when we have sided with the UFA and their approval or a Senator who has sponsored a fish farming bill. SEAS did nothing to alert our members to the code of conduct NMFS was developing for EEZ fish farming in WA. and AK, whose comment period ended in Oct. last year.

Let's double the dues and get more members, then we can hire more help and deal with more things. Apparently you have different priorities than the SEAS Board. Instead of stating dissatisfaction over SEAS lack of action on a specific issue, send me the information to persuade the board to work on mariculture instead of the current priorities.

Why are we sitting by as BC fish farmers assault Alaska with a lobby effort for their farm program? Why haven't we raised the issue of farmed salmon traffickers being on the ASMI board?

Ditto the last comment.

And what of our habitat move position, you didn't even mention that? All for now.
Victor Smith

CITY OF SAINT PAUL
Saint Paul Island, AK, May 29, 2003

LINDA FREED,
Kodiak City Manager,
Kodiak, AK.

Dear Ms. Freed:

I am writing to you concerning representations that you made regarding the community of St. Paul during the May 20, 2003 hearings before the U.S. Senate Com-

merce Committee regarding the BSAI Crab Rationalization Program developed by the North Pacific Fishery Management Council (NPFMC).

Although you have recently become involved in this process at the NPFMC level, you may be aware that St. Paul has for over four years played a leading role in developing a program that rationalizes the Bering Sea crab fisheries and seeks to find balance among the competing interests held in these fisheries by harvesters, processors, and communities.

My community's considerable investment of time and effort in this process is understandable given that 85 percent of our economy is dependent on the crab fisheries (primarily opilio processing) and that since the 1990s St. Paul has been the harbor for more than 40 percent of the average annual landings of opilio crab (as opposed to under 1 percent for Kodiak). The point is that whereas for Kodiak's diversified economy, Bering Sea crab processing is a minor economic activity, for St. Paul and other Bering Sea communities it is a matter of survival.

It is unfortunate that, contrary to the facts, during your presentation before the U.S. Senate Commerce Committee you chose to mention that St. Paul's backing of the BSAI crab rationalization program was in question. To support your unfounded assertion you highlighted the opposition of a local private corporation. While TDX, as a local private enterprise seeking private gains out of this process, is entitled to its opinion, it does not reflect the voice of the community of St. Paul. My community's numerous local interests are represented at the City Council. Two years ago the St. Paul City Council passed a resolution supporting the NPFMC's work on the crab rationalization program. This support remains solid.

As the Mayor/representative of a fellow Alaska city government I would have been pleased to meet or discuss with you my community's position prior to the hearings. We have enjoyed an excellent relationship with members of your community for years and have enabled many of them to make their livelihoods as harvesters in the crab fishery to your community's benefit. In my view, your action last week would be akin to me pointing to the numerous voices on Kodiak in support of the BSAI crab rationalization program to draw conclusions about Kodiak's "true" position. This is all the more surprising, since as a member of the NPFMC's Community Protection Committee you negotiated and participated in the unanimous vote to adopt the NPFMC's community protection provisions. Then last week, you appeared to reverse yourself when you indicated during testimony that the program did not have community protections.

I am attaching for your information, a copy of my testimony as well as the St. Paul City Council resolution which affirms St. Paul's position in support of the aforementioned program. Should you have any questions or concerns please do not hesitate to contact me.

Sincerely,

SIMEON SWETZOF, JR.,
Mayor,
City of St. Paul.

Cc: Matt Paxton—Office of Senator Ted Stevens
Bill Woolf—Office of Senator Murkowski
Anna Knudson—Office of Senator Murray
Dan Sakura—Office of Senator Cantwell
Dave Whaley—Committee on Resources, U.S. House of Representatives
David Benton—Chairman North Pacific Fishery Management Council
Kevin Duffy—Commissioner Alaska Department of Fish and Game

PREPARED STATEMENT OF JEFFREY R. STEPHAN, UNITED FISHERMEN'S MARKETING ASSOCIATION, INC.

Senator JOHN MCCAIN, Chairman,
U.S. Senate Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Re: May 20, 2003, hearing on the Bering Sea/Aleutian Islands Crab Rationalization Plan: U.S. Senate Committee on Commerce, Science, and Transportation

Dear Chairman McCain,

On behalf of the United Fishermen's Marketing Association, Inc. (UFMA), I respectfully submit this testimony to the Record of the May 20, 2003, hearing on the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Plan in the U.S. Senate Committee on Commerce, Science, and Transportation.

UFMA does not support the provision of permits or other authorization that allocates exclusive rights to U.S. fishery resources to, or other exclusive use of such resources by, the U.S. Processing Sector. UFMA does not support the authorization of exclusive processing rights or exclusive processing access for the U.S. Processing Sector with respect to BSAI crab, including Processing Shares, Individual Processing Quotas (IPQs), "Two Pie", etc.

Moreover, UFMA does not support the provision of authority to the Fishery Management Councils, or to the U.S. Secretary of Commerce (Secretary), to extinguish market access and market freedom for the U.S. Harvesting Sector by requiring U.S. fishing vessels to sell and deliver their legally harvested and legally owned fisheries products to a specific port, thereby, prohibiting such vessels from selling and delivering their products to buyers or ports of their choice ("Regionalization", or mandatory ports of landing).

We respectfully request that Congress should not judge the perilous and unsound notions of Processor Shares and Regionalization only as regional contrivances for Alaska or for BSAI Crab Rationalization, nor without first having comprehensively examined these concepts as important issues of National Policy. Free and open markets, vigorous competition and the enduring principles that underlie our antitrust laws should be as relevant today, and in Alaska, as when the Sherman Antitrust Act was passed.

We respectfully request that Senators and Representatives from coastal states with commercial fishing economies should not wreak Processor Shares or Regionalization on Alaska if they are not willing to do so on their own states, and should understand that these schemes will ultimately contaminate their own fishing industries.

Processor Shares and Regionalization are not fisheries management devices. They represent market allocation, market regulation and economic protectionism. The North Pacific Fishery Management Council earns great respect for their dedication and noteworthy accomplishments. The FTC, FCC, SEC and other entities, not the Councils, address "market regulation", "market allocation" or "preservation of competition"; these terms do not appear in the Findings, Purposes or Policy of the Magnuson-Stevens Act (MSA), and distinguished Council members nationwide are not chosen because of their knowledge, experience and understanding of these concepts.

UFMA is the longest established association of BSAI crab harvesters. The membership of UFMA includes vessel owners and operators who harvest crab, sablefish, halibut, salmon, herring, p. cod and other groundfish in Federal and state waters of the Gulf of Alaska (GOA) and the BSAI. Moreover, UFMA is actively involved and impacted by rationalization initiatives that are currently underway with respect to several Fishery Management Plans (FMPs) that govern U.S. fishery resources within the jurisdiction of the North Pacific Fishery Management Council (NPFMC), including the FMPs for BSAI King and Tanner Crabs, BSAI Groundfish, and GOA Groundfish.

I. National Study of Processor Shares and Regionalization

We respectfully request, prior to any further Congressional consideration of authorizing Processing Shares and Regionalization for application in the U.S. Fishing Industry, including the BSAI crab fishery, that Congress direct a full and comprehensive examination and report of Processor Shares and Regionalization. Such an examination and report should address foreign ownership, divestiture, anti-competitive concentrations and combinations, why already dominant processing entities need additional help and protection, etc.

In the Sustainable Fisheries Act of 1996, Congress directed the National Academy of Sciences (*i.e.*, National Research Council, or "NRC") to examine and report on the issue of Harvesting Sector "Individual Fishing Quotas" (IFQs). It makes sense for Congress to direct a similar examination and report of Processor Shares and Regionalization, since Congress did not direct in 1996, nor did the NRC provide in 1999, a comprehensive focus on or evaluation of the impacts, effects and mechanisms of Processor Shares or Regionalization, especially with respect to the significant anti-competitive and economic power issues that are undeniably present when Processor Shares are contemplated for use in fisheries management.

Such an examination and report on Processor Shares and Regionalization should be considered in the context of antitrust and trade statutes and policy, instead of in the context of MSA. We respectfully submit that oversight of any further consideration of Processor Shares and Regionalization, and of the above-suggested Congressionally mandated examination and report, should have Judiciary Committee oversight, in consultation with the Commerce Committee, Federal Trade Commission and the Secretary of Commerce.

If after the completion and Congressional consideration of a comprehensive examination and report of Processor Shares and Regionalization, Congress decides that these concepts are reasonable devices for use in the management of U.S. fishery resources, then we respectfully request that Congress should hold hearings to guide the development of National Standards that would apply to the use and application of Processor Shares and Regionalization in the management of U.S. fishery resources.

As previously referenced, in 1999 the NRC published "Sharing the Fish; Toward a National Policy on IFQs" ("Sharing the Fish"). While Sharing the Fish focused primarily on the impacts, effects and mechanisms of Harvesting Sector IFQs, in those instances where the NRC did address Processor Shares, it was clear that they found no valid rationale for Processor Shares: ". . . Nor did the committee find a compelling reason to establish a separate, complementary processor quota system (the 'two pie' system)." (Sharing the Fish, page 205); "Processors also complained . . . The committee was not convinced, however, that the solution to the perceived problem lies in the allocation of either harvesting or processing quota to processors." (Sharing the Fish, page 155).

We would be pleased to provide a suggested outline for a Congressional mandate of a comprehensive study and report of Processor Shares and Regionalization.

II. Lack of Adequate, Quality and Relevant Data, and Associated Analysis and Consideration

We ask Congress to closely examine the lack, quality, comprehensiveness, inclusion and availability of data and other information that is important and essential to understanding and analyzing the distributional and cumulative impacts of Processor Shares, and to making informed decisions that are associated with the potential application of Processor Shares. This is especially relevant when consideration is given to the combination of Processor Shares and Regionalization, and in the context of the BSAI Crab Rationalization Plan.

There is an incomplete understanding and analysis of the actual factual ownership of, and other vehicles that provide for the exercise of economic power and control over, BSAI Crab Harvesting Sector IFQs by the BSAI Crab Processing Sector. There is no clear enumeration of the distribution of Processor Shares by individual processing entity, entity location, or port. There is an incomplete understanding of the ownership structure of Harvester Sector vessels, and of the cumulative impacts that will result from the distribution of Harvester Sector IFQs to Processing Sector "affiliated vessels" (*i.e.*, vessels that are associated with Processing Sector entities through a variety of ownership interests, notes, loans, etc.), combined with the distribution of Processor Shares to those BSAI crab processors who are so affiliated with such vessels.

There is a significant lack of understanding and analysis of the substantial opportunities that exist in the BSAI Crab Rationalization Plan for the exercise of economic power and control that can and will be used by the Processing Sector over the Harvesting Sector generally, over the use of Harvesting Sector IFQs, and over competitive and fair price formation. It is not now possible to reasonably or accurately understand the substantial economic power and control that will be vested in the BSAI Crab Processing Sector as a result of Processor Shares. This is especially worrisome when Regionalization is combined with Processor Shares.

We respectfully request that Congress direct the Councils and the Secretary to request essential and relevant data that resides with the U.S. Maritime Administration (MARAD); such data that will generally permit the Councils and the Secretary to comprehensively evaluate and analyze the cumulative impacts of Processor Shares, Regionalization and Harvester Sector IFQs, and specifically with respect to the BSAI crab fishery. Possession of this information by the Councils and Secretary would significantly assist the Secretary and the Councils in their understanding of the social, policy and economic implications and impacts of their regulatory action with respect to Processor Shares.

Further, we request that Congress direct MARAD to release and make available the important and relevant information that they collect and compile with respect to the underlying ownership structure of U.S. Harvesting Sector vessels. Vessel ownership information that is collected and held by MARAD could be of significant benefit and use to the Secretary and to the Councils in support of making informed decisions with respect to the underlying ownership structure of entities that may receive IFQs or Processor Shares, including information that is necessary for evaluating participation in U.S. fisheries, the important distributive impacts and effects of IFQ or Processor Share ownership, the anticompetitive impacts of vertical integration, and the extent of foreign ownership of U.S. fishing resources.

III. Fair and Competitive Price Formation and Arbitration

Processing Shares and Regionalization invest the BSAI Crab Processing Sector with a significant increase of political and economic power, control and influence that will greatly obstruct the free flow of inputs to an otherwise but already variably competitive marketplace, including inputs upon which competitive prices for the Harvesting Sector depends (price formation). This is especially true for processors who benefit from the largesse of the American Fisheries Act Binding Arbitration as associated with price formation is characterized as a mitigation device. The BSAI Crab Processing Sector fashioned the pretension that Arbitration was meant to address “failed price negotiations”, thereby masking the true and underlying reasons why Arbitration was investigated. That is, successful price formation relies on the complex conditions and facts that exist in a competitive marketplace; however, price formation and Arbitration, as a result of Processor Shares and Regionalization, must rely on information from an artificial and significantly misaligned marketplace. Arbitration, albeit a politically expedient concept, provides a false sense of security and mitigation.

The Council was offered several meaningful and realistic opportunities to attempt to mitigate the obvious and expected negative impacts of Processor Shares and Regionalization on fair prices, and on competitive and open markets, including, for example, provisions that allowed: (1) all BSAI crab vessels to freely sell all their legally harvested and legally owned crab to Kodiak (the “Kodiak Open Port” concept); (2) all BSAI crab vessels to freely sell their last load of legally harvested and legally owned crab to Kodiak; (3) Kodiak-based BSAI crab vessels to freely sell all their legally harvested and legally owned crab to Kodiak; (4) Kodiak-based BSAI crab vessels to freely sell their last load of legally harvested and legally owned crab to Kodiak. The Council discarded all these suggestions.

An “Open Port” designation for Kodiak would provide some realistic mitigation, and at least one competitive market and port, to counter the anticompetitive impacts on prices and markets that are created by the implementation of Processor Shares and Regionalization.

IV. Foreign Ownership

We respectfully request Congress to evaluate the impacts and implications of Processor Shares with respect to competition of, and methods to prevent, limit and control, foreign ownership interest in, and economic control of (1) harvesting vessels; (2) permits or licenses that permit the Harvesting Sector to operate a vessel in a fishery where there exists a limitation on the number of vessels that are permitted to harvest a U.S. fishery resource (*e.g.*, license limitation programs); (3) permits or licenses that permit the Harvesting Sector to have exclusive rights to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person (*e.g.*, IFQs); (4) fishing history of the Harvesting Sector (*i.e.*, landings, participation and other criteria that will determine the qualification of Harvesting Sector entities to receive IFQs, licenses, permits etc); etc.

V. Divestiture of IFQs and BSAI Crab Vessels in the BSAI Crab Processing Sector

We respectfully suggest that Congress evaluate the use of divestiture as a means to mitigate the anticompetitive impacts that result from the application of Processor Shares in U.S. fisheries. Processing Sector entities that receive Processor should be required to divest themselves of harvesting vessels and Harvesting Sector IFQs as a reasonable precondition for receiving Processing Shares.

VI. Conclusion

Processor Shares will negatively impact the success and economic underpinnings of other fisheries. For example, we believe, as do others in the industry, that Processor Shares in the BSAI crab fishery, coupled with the benefits of the American Fisheries Act that accrued to several large dominant Alaskan processing entities, will negatively impact the ability of the Alaskan Salmon industry to recover from current market and structural related challenges.

The impacts that result from the application of Regionalization and Processor Shares either separately, or in combination, are difficult to analyze and understand. However, it is imperative that a thorough examination and understanding of these anticompetitive and other social and economic impacts are thoroughly investigated, explored and understood prior to a serious consideration of applying Regionalization or Processor Shares in fisheries management, including in the BSAI crab fishery.

UFMA has consistently supported rationalization of the BSAI Crab fishery. We believe that it is time to deliver the safety, conservation and management benefits

of BSAI Crab Rationalization, and we hope that the BSAI Crab Processing Sector will loosen their grip on these benefits. We hope that Congress will let the concepts of Processor Shares and Regionalization fade away.

Thank you for your consideration of our comments.

Sincerely,

JEFFREY R. STEPHAN

TESTIMONY OF VICTOR SMITH

June 6, 2003

To:
U.S. Senate Committee on Commerce, Science, and Transportation
Senator JOHN MCCAIN, Chairman

Re: Crab Rationalization Hearings

Dear Senator McCain and Committee Members:

Regarding the testimony of Kevin Duffy, it is preposterous that Mr. Duffy was the fishermen's associations' choice for Commissioner of Alaska Department of Fish and Game despite the fact that he'd previously voted for Processor Quota Shares on the Council. The support he received from fishermen's association executives to become Commissioner was unethical and possibly illegally granted. Note in the following email how David Bedford, who was then General Manager of South East Alaska Seiners Association and has now moved up to become Deputy Director of ADF&G appointed by Mr. Duffy, denies endorsing PQs and denies that SEAS support of Mr. Duffy was support of PQs.

This email (following) was received March 7, '03, from David Bedford, then SEAS General Manager. It is Mr. Bedford's response to questions about SEAS endorsement of Mr. Duffy for Commissioner.

Dave-

If, as you say, SEAS has never supported processor quotas, why are we supporting for commissioner Kevin Duffy, who voted for them? (V.S.)

You confuse support for the individual with support for one specific action. SEAS believes that Kevin will be responsive to the concerns of commercial fisherman, particularly seiners, as he has been as Alaska's Commissioner to the Pacific Salmon Commission and Deputy Commissioner for Fish and Game. Therefore SEAS supports him. Nota also that Kevin supported processor shares in the crab fishery, a fishery with little direct relevance to the mission of SEAS, because the Governor, his boss, instructed him to do so. Further you should recognize that the Governor arrived at this stance because his door was closed to commercial fishermen. The crucial issue now is whether we are in a position to work with and influence the current administration. We are. (D.B.)

Now look at where Mr. Duffy is. He is no longer just one of eleven unanimous voters on the Council; he is now the expert presenter of the processors PQ plans. And Gov. Knowles is no longer pulling his strings as Mr. Bedford claimed, so who is manipulating him this time? The Council process is flawed, and its' goals don't match those of the rest of the country.

It was wrong how Mr. Duffy acquired fishermen's support to become the processors embedded Commissioner, and his actions now prove this. Executives of the seiners associations and the United Fishermen of Alaska have played a big role in hiding from fishermen that there have been plans afoot in the industry to expand PQ's to all Federal fisheries and even State salmon fisheries. These actions now demonstrate that there has been a concerted effort by numerous people to advance this plan.

Fishermen's association Executives violations of association's by-laws and running their associations to achieve their own agendas by silencing fishermen and misrepresenting fishermen's interests are theft. For policy makers and processors to have knowingly relied upon this illegally crafted appearance of fishermen's support as a foundation for advancement of acquisition of resources from the American people is unethical at best. It should also highlight what has been going on in the fishing industry on numerous other issues. It is not possible that what we're seeing is the result of independent actions.

Sincerely,

VICTOR SMITH.

Foremost, we oppose any type of rationalization plan that rewards over capitalization.

We strongly oppose processor shares. They are not warranted. This is so because of the infrastructure already in place by the processors in question. Most of these capital investments (infrastructure) have long been paid for. This provides them with an advantage against any future competition.

We believe all coastal communities dependant on commercial fishing will suffer negative economic impact. This is so because it, (BSAI Crab Rationalization), would be president setting legislation mapping out future rationalization plans. This plan guarantees control of our fisheries resources to a select group of processors both *FOREIGN* and domestic. This plan, even if limited only to BSAI Crab, will give these select processors a huge competitive and economic advantage. The majority of these processors own plants in multiple coastal communities: thus, giving them advantages over competing plants in communities outside of the BSAI Crab region.

We believe any legislation that contradicts our current Anti-Trust Laws should be reviewed in depth with representatives of all groups whom are affected both directly and indirectly.

In closing, we would like to submit that economics itself would be enough to rationalize the BSAI Crab fishery. The pace and safety of this fishery is a concern. These concerns can be addressed through trip limits and gear restrictions (i.e. Pot Limits). Any further over capitalization (i.e. Capital Construction Funds) should *not* be encouraged by government. We cannot support any further legislation that forever gives control of a public resource to a select few.

We are a commercial fishing family residing in Kodiak, Alaska. Our above comments are brief. Familiarity with the BSAI Crab Rationalization proposal would be needed to understand our letter. We are not directly involved in this fishery, but understand the effect the BSAI Crab Rationalization will have on future rationalization of the Gulf of Alaska and Bering Sea Ground Fisheries which we are economically dependant on.

Sincerely,

RON AND JULIE KAVANAUGH
RON JR—AGE 22,
MIRANDA—AGE 14,
SYLVIA—AGE 11,
GARRETT—AGE 4

PREPARED STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Thank you, Mr. Chairman, for holding this hearing today.

There is a long history of fishing vessels from Oregon traveling up to Alaskan waters to share in the crab fishery that has flourished there. These boats are crewed by both Oregonians and Alaskans and deliver their catch to the coastal communities of Alaska to be processed. If done fairly, the assigning of quotas within a fishery can lead to both a safer fishing season and a more sustainable fishery. However, I share the concerns of Oregon fishers about the assigning of processor quota shares particularly if they are done in a manner that will benefit a few processors at the expense of many fishers and other processors. Assigning quota share in this manner raises issues of anti-trust and could lead to the consolidation of processing capacity.

I also am wondering why the North Pacific Fishery Management Council has devised a plan that they do not have the statutory authority to implement without the approval of Congress.

I thought the purpose of the management councils was to make decisions at the regional level under the guidelines provided by Congress. I am not sure Congress wants or should get into the habit of debating individual management plans and making what should be regional decisions at the national level. Nor should management councils get in the habit of choosing to ignore Congressional instruction.

I would like to submit the following questions for the record:

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO
KEVIN DUFFY

Question 1. As a representative of the Alaska Department of Fish and Game and the interests of all Alaskans, was your testimony reviewed by Mr. Alan Austerman, the governor's fish policy advisor? And if not, would you please explain why?

Answer. Witness did not respond.

Question 2. As a member of the Council, do you have any insight as to why there were numerous motions on elements of harvesting shares but no motions made on

elements of the processing share aspects of the program such as the ratio of A/B shares or the qualifying years used to award processing history?

Answer. Witness did not respond.

Question 3. The analysis of Dr. Charles R. Plott, the respected economic modeler from the California Institute of Technology, demonstrated that the “last best offer” arbitration process supported by the processors would be less apt to result in a competitive price for “A” shares, yet you voted for this “last best offer” approach over the alternative “fleet-wide” approach. Could you explain why?

Answer. Witness did not respond.

Question 4. A National Academy of Sciences panel recommended that “if the regional councils determine that processors may be unacceptably disadvantaged by an IFQ program because of changes in the policy or management structure, there are means, such as buyouts, for mitigating these impacts without resorting to the allocation of some different type of quota. For example, coupling an IFQ program with an inshore-offshore allocation would preserve the access of shore-based processors to fishery resources.” What was your rationale for voting against the recommendations of the National Academy of Sciences?

Answer. Witness did not respond.

Question 5. You and other proponents of processor shares have frequently cited the 11–0 Council vote as an argument for why this plan should be accepted. However, the 11–0 Council vote preceded the decision on the binding arbitration trailing amendment which was a contentious 6–5 decision favoring the plan supported by the processors. It seems to me that once all of the parts of the proposed plan were revealed that the plan was endorsed in the Council by the thinnest of margins. Am I wrong?

Answer. Witness did not respond.

Question 6. According to the proposed processor share allocation formula, which looks at a narrow two-year window, the top 12 processors with one exception would receive more quota allocation than they historically processed, 99.4 percent to 75.66 percent respectively. Why did the Council decide on such a narrow window for determining historical levels of processing?

Answer. Witness did not respond.

Question 7. The General Accounting Office (GAO) has been unable to find any credible evidence that processors in any fishery have been disadvantaged by the allocation of harvester shares. Why should Congress endorse a plan that not only is contentious, but appears to be unnecessary?

Answer. Witness did not respond.

Question 8. We know what fishing quotas achieve for resource conservation and safety; what do processor quotas achieve for resource conservation and safety?

Answer. Witness did not respond.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO
LINDA FREED

Question 1. Chairman Stevens has reminded us that the original intent of the Magnuson Fishery Conservation and Management Act was to protect the fisheries of the United States from foreign interests. Are there crab processors who are owned directly or indirectly by foreign interests? Will any processors that are directly or indirectly owned by foreign interests benefit from this proposed plan at the expense of American owned processing companies?

Answer. Witness did not respond.

Question 2. We know what fishing quotas achieve for resource conservation and safety; what do processor quotas achieve for resource conservation and safety?

Answer. Witness did not respond.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO
DAVE FRASER

Question 1. Chairman Stevens has reminded us that the fishery management councils were set up to manage fish populations. Is there any reason processor shares would be necessary to manage fish populations?

Answer. Witness did not respond.

Question 2. Has a management plan that allocates processor shares in a manner similar to this proposed plan ever been tested in a crab fishery? If so, what is the current state of that fishery?

Answer. Witness did not respond.

Question 3. The National Academy of Sciences recognized that processors may be disadvantaged by fishing quotas. What steps other than processor quotas could be used to protect processors?

Answer. Witness did not respond.

Question 4. We know what fishing quotas achieve for resource conservation and safety; what do processor quotas achieve for resource conservation and safety?

Answer. Witness did not respond.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO
FRANK KELTY

Question 1. The proposed plan would take a public resource, Alaskan crab, and allocate this resource among harvesters. The proposed plan then allocates the harvested crab to processors even though the harvested crab has become private property in the hands of harvesters. As a supporter of this proposed plan, are you telling me that the United States government and not market forces should decide what fishers may do with their private property? If the issue is fairness and protecting processors from the perceived advantage that harvesters will obtain with the allocation of harvester shares, what about consumers? Should the United States Government also be setting prices for the products the processors are selling to protect consumers from the advantage that processors obtain with the allocation of processor shares? If consumers don't need protection from processor shares, why do processors need protection from harvester shares?

Answer. Witness did not respond.

Question 2. The General Accounting Office (GAO) has been unable to find any credible evidence that processors in any fishery have been disadvantaged by the allocation of harvester shares. Why should Congress endorse a plan that not only is contentious, but appears to be unnecessary?

Answer. Witness did not respond.

Question 3. We know what fishing quotas achieve for resource conservation and safety; what do processor quotas achieve for resource conservation and safety?

Answer. Witness did not respond.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO
ARNI THOMPSON

Question 1. Chairman Stevens has reminded us that the fishery management councils were set up to ensure that fisheries decisions would be made at the regional level and not at the national level or in the Federal courts. Of the witnesses that support this proposed plan, you seem to qualify your support for the plan more than Mr. Kelty and Mr. Duffy who seem to support the proposed plan unconditionally. In your opinion which specific parts of the plan are the most untested?

Answer. Witness did not respond.

Question 2. Once the proposed plan is accepted, you noted in your testimony that you expect continual oversight by the Council and Congress to correct or modify the processor quota portion of the plan. Based on your experience with the North Pacific Fishery Management Council and the United States Congress, do you expect that any necessary changes can be implemented in a span of less than two or three years?

Answer. Witness did not respond.

Question 3. Why should Congress support a plan that is supported by only one of the four major associations of vessel owners, which in turn, represents fewer than 15 percent of issued crab licenses?

Answer. Witness did not respond.

Question 4. Of the vessels that you list as members of the Alaska Crab Coalition, how many are current members, and of these, how many qualify as "non-processor affiliated"?

Answer. Witness did not respond.

Question 5. The General Accounting Office (GAO) has been unable to find any credible evidence that processors in any fishery have been disadvantaged by the al-

location of harvester shares. Why should Congress endorse a plan that not only is contentious, but appears to be unnecessary?

Answer. Witness did not respond.

Question 6. We know what fishing quotas achieve for resource conservation and safety; what do processor quotas achieve for resource conservation and safety?

Answer. Witness did not respond.

