

REGULATORY IMPACT REVIEW

For an Emergency Rule to
Relieve Regional Delivery Requirements for the
Western Aleutian Islands Golden King Crab Fishery

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Abstract: The Council has requested that NMFS promulgate an emergency rule to relieve the existing regional delivery and processing requirement in the Western Aleutian Islands golden king crab fishery. An emergency exists because no processing facility is currently open in the West region, yet federal regulations require that a portion of crab be processed in the West region. Relieving this restriction would enable fishermen to deliver harvests made with West designated individual fishing quota outside the West region. A substantial portion of the fishery will likely remain unharvested, to the economic detriment of fishery participants and consumers, unless the West region delivery requirement is relieved. This document contains a Regulatory Impact Review to analyze the economic impacts of temporarily relieving the existing West region delivery requirement.

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1 INTRODUCTION

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program, the Crab Rationalization Program. The program is unique in several ways, including the allocation of processing shares corresponding to a portion of the harvest share pool. Under the program, 90 percent of the annual catcher vessel owner harvest share allocation is issued as “Class A” individual fishing quota (IFQ), which must be delivered in a designated geographic region to a processor holding unused individual processing quota (IPQ) with the same regional designation. For the Western Aleutian Islands golden king crab fishery, existing regulations require that 50 percent of the catcher vessel Class A IFQ, issued for this fishery, be delivered to a processor located in the West region with West designated IPQ. The remaining 50 percent of the Class A IFQ is undesignated and can be delivered to any processor with corresponding IPQ.

At its December 2009 meeting, the Council voted 10 to 1 to request that NMFS promulgate an emergency rule to temporarily relieve the existing regional delivery and processing requirement in the Western Aleutian Islands golden king crab fishery. The Council determined that an emergency exists because no processing facility is currently open in the West region, yet federal regulations require that a portion of crab be processed in the West region. Relieving this restriction would enable fishermen to deliver harvests made with West designated IFQ, outside the West region. Without the ability to process the crab, a substantial portion of the fishery will likely remain unharvested to the economic detriment of fishery participants and consumers.

The emergency rule would provide relief for the 2009/2010 crab fishing year and enable the fishery to occur while the Council develops an amendment to the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) to permanently address this situation. The Council is scheduled to review a draft analysis at its February 2010 meeting that assesses alternatives to amend the FMP, in the event unforeseen events prevent deliveries in the West region in future years.

This document contains a Regulatory Impact Review to analyze the economic impacts of relieving the existing West region delivery requirement.

2 REGULATORY IMPACT REVIEW

This chapter provides an economic analysis of the action, addressing the requirements of Presidential Executive Order 12866 (E.O. 12866), which requires a cost and benefit analysis of federal regulatory actions.

The requirements of E.O. 12866 (58 FR 51735; October 4, 1993) are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 further requires that the Office of Management and Budget review proposed regulatory

programs that are considered to be “significant”. A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

3 PROPOSED ACTION AND DESCRIPTION OF ALTERNATIVES

Section 305(c) of the Magnuson Stevens Fishery Conservation and Management Act provides authority for rule making to address an emergency. Under that section, a Council may recommend emergency rule making, if it finds an emergency exists. At its December 2009 meeting, the Council determined that an emergency existed and requested that NMFS promulgate an emergency rule to relieve the regional delivery requirement in the Western Aleutian Islands golden king crab fishery. In August of 2009, the only operator of a crab processing shore plant in the West region, Adak Fisheries, declared bankruptcy. The plant has not operated during the 2009/2010 crab fishing season, and it is reasonable to believe that the plant will not open before the close of the season. In addition, the Council believes that it is not economically feasibility to make alternative processing arrangements within the region (such as the introduction of a floating processor). In the absence of emergency rulemaking, these circumstances are likely to result in 50 percent of the catcher vessel Class A IFQ remaining unharvested, to the economic detriment of fishery participants.

NOAA Fisheries policy guidelines provide that the only prerequisite for such rulemaking is that an emergency must exist and that rulemaking can be justified by an economic emergency (see NMFS Instruction 01-101-07 and 62 FR 44421). Emergency rule making is intended for circumstances that are “*extremely urgent*”, where “*substantial harm to or disruption of the...fishery...would be caused in the time it would take to follow standard rulemaking procedures.*” The current fishery is disrupted because no processing facility is open this season in the West region and no processing facility is likely to operate in the foreseeable future. The result will be substantial economic harm to fishery participants unable to prosecute the fishery in compliance with the West region landing requirement.

The guidance cautions that, “*controversial actions with serious economic effects, except under extraordinary circumstances, should be undertaken through normal notice-and-comment rulemaking.*” The Council received no testimony in opposition to emergency rulemaking, thereby suggesting that the action would be non-controversial. While the proposed emergency rule does not appear to be controversial, the circumstances are indeed extraordinary, as the unanticipated closure of the Adak plant and the absence of other processing alternatives within the region leaves harvesters without the ability to deliver crab in the region.

To further clarify the scope of emergencies to which this authority applies, the guidance defines an emergency as “*a situation that:*

- 1) *results from recent, unforeseen events or recently discovered circumstances;*
- 2) *presents serious conservation or management problems in the fishery; and*
- 3) *can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.”*

The Council found that the first criterion is met by the recent bankruptcy and closure of the Adak plant that prevents deliveries to the only shoreside facility in the West region. It should be noted that the Council took action recently that would allow processors to consolidate their operations in some crab fisheries, including the Western Aleutian Islands golden king crab fishery, under the assumption that all processing would take place at the Adak plant. Although persistent rumors have suggested that the financial condition of the company operating the Adak plant was questionable, the plant closure and bankruptcy proceeding introduced new concerns surrounding the ability of the Adak plant to accept deliveries in the current season. This situation differs substantively from the situation in prior years, during which protracted negotiations delayed, but did not present an absolute barrier to, landings. Additionally, the absence of other processing alternatives such as the introduction of a floating processor, has been a recent, unforeseen event.

The Council found that the second criterion is met, as the current situation is a result of a management structure under which the West region landing requirement now prevents prosecution of a portion of the fishery. In the absence of that requirement, landings could be made in operational processing facilities outside the West region (such as Unalaska/Dutch Harbor). The Council believes that regulations that would result in leaving a substantial portion of the crab in this region unharvested constitute a management problem.

The Council found that the third criterion is met, as the removal of the West region landing requirement will address the problem, providing a clear and direct benefit to fishery participants, who would otherwise be unable to complete the harvest of allocations designated for West region landing. Since normal notice-and-comment rulemaking would be ineffective for addressing the immediate circumstances, the Council determined that emergency rulemaking is the only available avenue to address this situation.

While the normal rulemaking process is the preferred avenue for making regulatory changes, as it provides interested parties the full ability to comment, the Council believes that in this case, the cost of lost harvests definitely outweigh the benefit of using the more protracted, normal process that would be ineffective for addressing the immediate issue. While that benefit of the normal rulemaking process should not be diminished, it should be considered that the Council’s recommendation came only after putting its consideration of this issue on its December 2009 meeting agenda and receiving a discussion paper describing the emergency rulemaking requirements and their applicability to the present circumstances. While not the normal process for Council decision making, this provided interested parties with notice of the possible recommendation and opportunity to comment. Representatives of interested parties (including harvesters, processors, and affected communities) testified, all in support of the recommendation for an emergency rule.

Due to the unique nature of this fishery, harvesters will need as much time as possible to harvest the 600,000 pounds of golden king crab. Since the season opened on August 15, harvesters have been harvesting the undesignated IFQ and are therefore already geared up and out in the remote western Aleutian Islands. For the emergency rule to be effective in providing relief, these vessels need to know that they should stay in the West region to harvest the remainder of their IFQ.

Clearly, the public and interested parties benefit from additional opportunity to comment in the more protracted, normal rulemaking process. Yet, it should be considered that the Council did delay its recommendation one meeting, expressly to ensure that notice and opportunity to comment were provided to interested parties, and that the Council had received the latest available information concerning the bankruptcy and plant closure situation. It also provided additional time to see if some processing capacity would enter the region, removing the need for emergency action. This process has ensured that a portion of the value of advance notice, public comment, and deliberative consideration under the normal rulemaking process would not be sacrificed with an emergency rule.

Further, the Council has also initiated a typical plan amendment process to address this situation in a more permanent manner. That proposed action is intended to provide an outlet for deliveries if unforeseeable events prevent deliveries in the West region in a future season. The willingness of the Council to consider permanent action demonstrates its ongoing commitment to address this issue.

The Council has identified the following two alternatives for this action:

Alternative 1: No action alternative (Status quo)

Existing regulations would remain that require golden king crab harvested with 50 percent of the catcher vessel Class A IFQ issued for the golden king crab fishery, be delivered to a processor located in the West region with West designated IPQ.

Alternative 2: Emergency Rule

NMFS would issue an emergency rule, expiring after the 2009-2010 golden king crab fishing season, that would exempt IFQ and IPQ from the West region delivery requirements, making all IFQ and IPQ for Western Aleutian Islands golden king crab undesignated and allowing all golden king crab to be delivered and processed in any location.

4 EXISTING CONDITIONS

This section describes the relevant existing conditions in the Western Aleutian Islands golden king crab fishery. The section begins with a brief description of the management of the fisheries under the Crab Rationalization Program, followed by descriptions of the harvesting and processing sectors in this fishery, and background on communities that depend on this fishery that could be affected by this action

4.1 Management of the crab fisheries

Nine Bering Sea and Aleutian Island crab fisheries are managed under the Crab Rationalization Program. Under the program, holders of License Limitation Program (LLP) licenses endorsed for a fishery were issued vessel owner quota shares (QS), which are long term shares, based on their qualifying harvest histories in that fishery. Catcher/processor license holders were allocated catcher/processor vessel owner QS for their history as catcher/processors; catcher vessel license holders were issued catcher vessel QS based on their history as a catcher vessel. QS annually yield IFQ, which are privileges to harvest a particular amount of crab in pounds in a given season. The size of each annual IFQ allocation is based on the amount of QS held in relation to the QS pool in the fishery. So, a person holding 1 percent of the QS pool would receive IFQ to harvest 1 percent of the annual TAC in the fishery. Ninety percent of the catcher vessel owner IFQ is issued as “A shares” or “Class A IFQ,” which must be delivered to a

processor holding unused IPQ.¹ The remaining 10 percent of these annual IFQs are issued as “B shares” or “Class B IFQ,” which may be delivered to any processor.²

Processor quota shares (PQS) are long term shares issued to processors. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued for 90 percent of the TAC, creating a one-to-one correspondence between Class A IFQ and IPQ.³

Class A IFQ and IPQ are subject to regional delivery requirements, under which harvests from those shares must be landed in specified geographic regions. For the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ are undesignated, which means that can be delivered to any processor with available IPQ, and 50 percent is designated for delivery in the West region, (i.e., west of 174°W longitude), to any processor with corresponding West designated IPQ.

4.2 Aleutian Islands Golden King Crab Fishery

Prior to implementation of the rationalization program, the crab fisheries were managed under the LLP. Under that program, 28 licenses carried endorsements authorizing participation in the Aleutian Islands golden king crab fisheries (including the Western fishery). Despite a relatively constant TAC leading up to implementation of the rationalization program, the license limits were not constraining and the fishery did not attract the level of competition observed in other crab fisheries (see Table 1). The fishery’s small TAC and distant, relatively limited grounds are believed to have been an effective deterrent to entry.

Table 1. TACs, catches, and participation by operation type in the Western Aleutian Islands golden king crab fishery (2000/1 through 2008/9 seasons).

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Season	TAC	Catch	Percent of TAC harvested	Number of vessels		
				catcher vessels	catcher processors	all unique vessels
2000 - 2001	2,700,000	2,902,518	107.5	11	1	12
2001 - 2002	2,700,000	2,693,221	99.7	8	1	9
2002 - 2003	2,700,000	2,605,237	96.5	5	1	6
2003 - 2004	2,700,000	2,637,161	97.7	5	1	6
2004 - 2005	2,700,000	2,639,862	97.8	5	1	6
2005 - 2006	2,430,006	2,382,468	98.0	2	1	3
2006 - 2007	2,430,005	2,002,186	82.4	2	1	3
2007 - 2008	2,430,005	2,246,040	92.4	2	1	3
2008 - 2009	2,551,500	2,252,111	88.3	2	1	3

Sources: ADFG fishtickets and NMFS RAM catch data (for 2005-2006, 2006-2007, 2007-2008, and 2008-2009)

¹ Currently, the C shares issued to captains are an exception to this generalization. Those shares are not subject to IPQ landing privileges during the first three years of the program. During that period, the IPQ corresponding to the C share allocations are withheld.

² The terms “A share” and “Class A IFQ” are used interchangeably in this paper, as are the terms “B share” and “Class B IFQ”.

³ Although 90 percent of IFQ issued each year are issued as A shares, individual allocations can vary from 90 percent. Holders of PQS and their affiliates receive their entire IFQ allocations as A shares (and are not allocated B shares). The rationale for issuing only A shares to PQS holders and their affiliates is that these persons do not need the extra negotiating leverage derived from B shares. To maintain 10 percent of the IFQ pool as B shares requires that unaffiliated QS holders receive more than 10 percent of their allocation as B shares (and less than 90 percent A shares).

Despite relatively low participation levels in the years leading up to implementation of the rationalization program, the fishery did exhibit signs of increased effort. Seasons progressively shortened in the few years leading up to implementation of the program (see Table 2).

Table 2. Season opening and closings in the Western Aleutian Islands golden king crab fishery (2001/2 through 2004/5 seasons).

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Season	Season opening	Season closing
2001 - 2002	August 15	March 30
2002 - 2003		March 8
2003 - 2004		February 2
2004 - 2005		January 3

Sources: ADFG Annual Management Report.

Under the rationalization program, quota shares were allocated based on historic activity in the fishery. With few participants, initial allocations of QS were very concentrated. Very few QS transfers have been made since the implementation of the program, so QS holdings have remained very concentrated (see Table 3).

PQS was initially allocated to qualifying processing companies as 50 percent West designated and 50 percent undesignated to correspond with the IFQ. Because less than 50 percent of historic processing occurred in the West, West PQS was allocated to processors without history in the West. The Adak plant received all of its PQS as West designated because it ran a plant in the West at the time of the initial allocation. For the 2009/2010 fishing season, five other qualifying processing companies received West designated IPQ. Note that while these five companies receive West designated IPQ, they do not have facilities in the West region.

The program allows the flexibility for an IPQ holder to process crab, through custom processing, with that IPQ at a facility that it does not own. Before the 2009/2010 season, a 30 percent processing share use cap has prevented any single plant from processing all of the West region IPQ deliveries. Since the beginning of the 2009/2010 season, the use cap exemption applicable to custom processing has removed this regulatory impediment to a single processor receiving all West region IPQ deliveries (NPFMC/NMFS 2009). The exemption was intended to resolve uncertainties concerning availability of processing capacity in the West region.

Table 3. Quota share holdings by share type, region, and operation type in the Western Aleutian Islands golden king crab fishery (2009-2010).

Share type	Share holdings by region and operation type						Across regions and operation types			
	Region/Catcher processor	QS holders	Percent of pool	Mean holding	Median holding	Maximum holding	QS holders	Mean holding	Median holding	Maximum holding
Owner Quota Shares	Undesignated	12	26.9	2.2	1.0	11.0	15	6.67	1.78	45.73
	West	8	26.9	3.4	1.2	13.5				
	Catcher processor	3	46.2	15.4	0.5	45.7				
Crew Quota Shares	Catcher vessel	7	57.5	8.2	6.3	21.7	8	12.50	7.45	41.74
	Catcher processor	2	42.5	21.3	21.3	41.7				

Source: NMFS Restricted Access Management IFQ database, crab fishing year 2009-2010.

Note: These share holdings data are publicly available and non-confidential.

QS holders have organized into harvest cooperatives, reducing the fleet to two catcher vessels and a single catcher/processor, all of which have fished only cooperative allocations. In the first three years of the program, over 99 percent of the annual IFQ has been allocated to cooperatives that have formed in the fishery. In the first three years, three cooperatives formed; in the fourth year, four cooperatives were formed. Gains arising from IFQ are also suggested by the changes in pot usage, pot lifts, and catch per

unit effort in the fishery (see Table 4). In the first three years of the program, the number of registered pots per vessel has increased substantially, but the number of pot lifts in the fishery has fallen. Catch per unit effort has also risen substantially, suggesting that participants' use of greater numbers of pots, and allowing those pots to soak for longer periods, has increased catch rates.

Table 4. Pot usage and catches in the Western Aleutian Islands golden king crab fishery (2000/1 through 2007/8).

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Season	Number of pots registered*	Number of pot lifts *	Lifts per registered pot*	Average catch per unit effort (crabs per pot lift)*	Pots per vessel	Pounds per pot
2000 - 2001	8,910	101,239	11.4	7	743	28.7
2001 - 2002	8,491	105,512	12.4	7	943	25.5
2002 - 2003	6,225	78,979	12.7	8	1,038	33.0
2003 - 2004	7,140	66,236	9.3	10	1,190	39.8
2004 - 2005	7,240	56,846	7.9	12	1,207	46.4
2005 - 2006	4,800	27,503	5.7	21	1,600	86.6
2006 - 2007	6,000	22,694	3.8	20	2,000	88.2
2007 - 2008	4,800	25,287	5.3	21	1,600	88.8

Sources: *ADFG Annual Management Report and **fishtickets and **NMFS RAM catch data (for 2005-2006, 2006-2007, and 2007-2008)

As might be expected, since implementation of the program, catcher vessel fishing has been extended over a longer period of time (see Table 5). Substantial time periods between landings (or breaks in fishing) appear to have developed. QS holders in the fishery assert that the large spreads between the first delivery and the last deliveries in the second and third years arise largely from the lack of available processing capacity in the West region. These QS holders assert that landings during the second and third years were delayed, because participants relied on the shore plant at Adak to handle processing in the West region of the fishery, rather than establishing alternative platforms to support West region landings. Prolonged negotiations concerning processing arrangements between IPQ holders and the Adak processor are said to have delayed processor availability during those two years.

Table 5. Seasons and deliveries in the Western Aleutian Islands golden king crab fishery (2005/6 through 2008/09).

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Season	Season opening	Date of first delivery	Date of last delivery	Season closing
2005-2006		September 6	March 25	
2006-2007	August 15	September 10	May 6	May 15
2007-2008		September 14	May 21	
2008-2009		September 15	May 12	

Source: RAM IFQ landings data

Although the disposition of the bankruptcy of Adak Fisheries has contributed to uncertainties concerning processing capacity in the West region, processing capacity in the West region has been an issue since the opening of the fishery. In the first year of the program, the Adak plant and a floating processor accepted deliveries in the West region. Since then, no plant other than the Adak plant has received West region deliveries of crab. Harvesters have asserted that they have been prevented from planning fishing, as negotiations between the Adak plant operator and IPQ holders have lasted well into the season. Harvesters also did not fully harvest the IFQ in the fishery in the second, third, or fourth years of the program, arguably because of the processor share use cap constraining processing at the Adak plant and a lack of any other available processing capacity in the West region.

Holders of West designated PQS have considered the viability of operating a floating processor in the West region. Processor representatives provided testimony to the Council at the December 2009 Council meeting that operating a floating processor in the West region would not be profitable, due the length of the golden king crab fishery, the expected price per pound for golden king crab, and operating costs. Notwithstanding these circumstances, it is not clear that the IFQ holders have used tools provided by the program that could assist them.

No binding arbitration actions have taken place in the fishery in the first four years of the program. In the current season, IFQ holders are believed to have maintained their right to arbitrate under the lengthy season approach, but have not initiated any proceedings to date. Some harvesters have suggested that they have avoided use of the arbitration system because they believe it will be ineffective and could hurt their positions in the fishery. These participants believe that the adversarial nature of arbitration proceedings could damage relationships between the sectors in the fishery. While it is clear that the system is adversarial and might stress relationships, it is unclear whether use of the system would damage relationships as contended. The system has been used effectively in other fisheries. While it has stressed relationships among participants at times, it is not believed to have had long term detrimental effects on those relationships, beyond those that have arisen in other delivery disputes. In actuality, the use of the arbitration system in those other fisheries might be argued to have had a positive effect on relationships, since it has clarified expectations.

In addition, it is asserted that the arbitration system may be ineffective because IPQ holders have used custom processing relationships to process landings in the region. It is clear that an arbitrator is likely to have no authority to compel a plant, processing under a custom processing relationship, to accept any delivery. The arbitrator is also unlikely to have authority to compel an IPQ holder to accept a delivery. Regardless of who is engaged in the physical processing of the delivery, the arbitrator's only authority is to establish a contract that binds both the IFQ holder and IPQ holder. Any failure to comply with that contract would be enforceable only through a civil action. So, an IPQ holder's failure to perform could be grounds for damages against that IPQ holder. Although the IFQ holder would have no action against the plant processing under the custom processing arrangement, it is unclear how the IFQ holder is disadvantaged, since the suit could be pursued against the IPQ holder. In addition, given the prevalence of custom processing in all fisheries under the program, it is unclear how this differs from the circumstances in any other fishery. In those other fisheries, the arbitration system has effectively protected IFQ holder interests.

4.3 Ex vessel and first wholesale pricing and consumer markets

This section briefly summarizes the ex vessel and first wholesale prices for golden king crab and market conditions. The discussion draws on the golden king crab prices and markets in the annual Golden King Crab Price Formula and Arbitrator Market Report, prepared by John Sackton of Seafood Datasearch (Sackton 2009), the most comprehensive discussion of pricing in the fishery.

Final price data are available for the various species harvested in the program (see Table 6). These data, however, are not collected by fishery and include catch in fisheries other than those subject to the rationalization program. Although catch from the rationalization program dominates these data, in some cases, catch from other fisheries may affect final prices observed in these data. Overall, the data do show a declining price trend, which accurately characterizes price changes in recent years in the fisheries.

Table 6. Estimated golden king crab ex vessel price and first wholesale price, 2001 - 2006 (dollars/pound).

Year	Ex vessel price	First wholesale price
2001	3.37	6.95
2002	3.46	7.58
2003	3.62	7.89
2004	3.15	6.02
2005	2.89	6.00
2006	1.92	4.35
2007	2.16	5.34
2008	3.58	5.75

Source: ADFG Commercial Operators Annual Report

Crab markets, in general, suffer from great volatility. First wholesale prices for golden king crab showed a notable decline in 2005, the first year of the rationalization program (Table 6). In the second year, an abundance of competing small sized red king crab imports further weakened prices. Going into the third year of the program it was thought that the price could remain at a lower level because the demand for golden king crab does not seem to have increased substantially. Overall, the increase in demand for crab products was expected to result in either stable or perhaps slightly rising prices for golden king crab in 2008 (Sackton 2007).

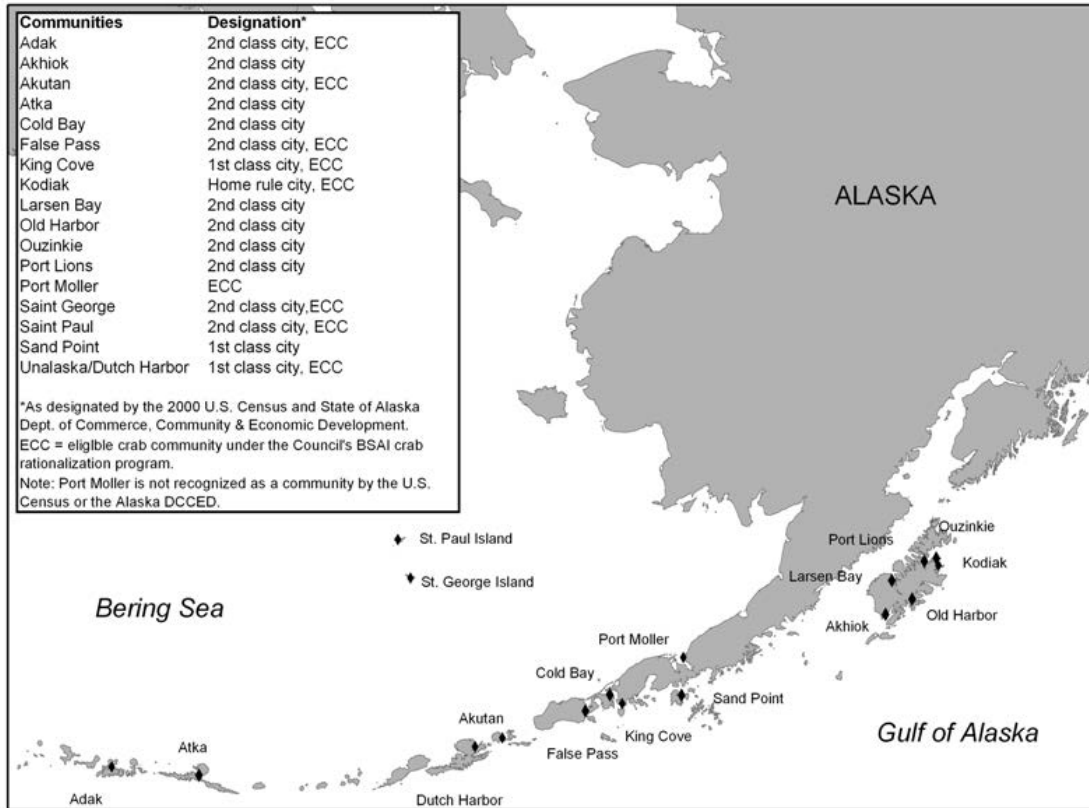
In the 2008/2009 season, Alaska crab fishermen and processors were the beneficiaries of good timing, as king crab inventories were depleted. This situation, together with a relatively strong Japanese market, led to golden king crab prices approaching historic highs. Since that time, the weakness of the market, particularly large retail and food service markets, have led to a substantial decline in prices. Indications are that this trend will continue, leading to prices near the 2006 level, which approached historic lows. Based on his market analysis, Sackton (2009) concluded that “[t]here is a very real potential...that the value of golden king crab could decline to a point where it is not economical to harvest the entire quota.”

4.4 Communities

Several communities have historically been home to processors that have taken delivery of crab from the Bering Sea and Aleutian Islands crab fisheries. Limited information concerning the geographic distribution of processing in the crab fisheries can be released, owing to confidentiality constraints, because relatively few processors participate in the fishery in any location.

Two Alaska communities are directly affected by the circumstances in the golden king crab fisheries, Unalaska/Dutch Harbor and Adak (see Figure 1); however, only Unalaska/Dutch Harbor will be directly affected by this action, should the delivery restriction be lifted for the 2009/2010 golden king crab fishery. This section provides general background information on both communities. The discussion of Adak is included, since that community was the intended beneficiary of the West region landing requirement. Presumably, Adak would not be affected by this action, as no facility is available to process landings in the community this season therefore, no golden king crab would be processed there regardless of whether this emergency rule is implemented. These communities vary in their geographic relation to the fishery; their historical relationship to the fishery; and the nature of their contemporary engagement with the fishery through local harvesting, processing, and support sector activity or ownership. Each of these factors influences the direction and magnitude of potential social impacts of the fishery.

Figure 1. Cities by type in the Bering Sea, Aleutian Islands, Alaska Peninsula, and Kodiak Island.



4.4.1 Unalaska/Dutch Harbor

Commercial fishing and seafood processing play a significant role in the economic success of Unalaska. The community is home to the greatest concentration of processing and catcher vessel activity of any Alaska community (EDAW 2005). As a result, commercial fishing and seafood processing provide a significant number of jobs and source of income to the community. For example, the four largest employers in Unalaska are the seafood processors UniSea, Inc., Westward Seafoods, Alyeska Seafoods, Inc., and Royal Aleutian Seafoods, Inc.

Pollock accounts for nearly 70 percent of the total wholesale value of seafood processed in Dutch Harbor in 2005. The second largest contributor to total wholesale value processed in Dutch Harbor is crab at nearly 20 percent. Of the crab species, red king crab provided the largest contribution at \$51 million in 2005, followed by snow crab at \$33 million.

Dutch Harbor based processors received a substantial share of the processor share allocations in most crab fisheries under the rationalization program. These shares are subject to rights of first refusal of the Dutch Harbor community entity. These shares are unlikely to migrate out of the community because crab processing at most facilities plays an important part in an integrated operation that serves several fisheries.

Dutch Harbor is also home to a resident fleet, but it is much smaller than the fleets of some other fishing communities within the same region. The local fleet tends to participate in cod, halibut, and crab fisheries on a small scale. In recent years participation in the BSAI crab fisheries by the Unalaska small boat fleet

has diminished. Several of the crab fisheries in the surrounding area have closed, thus participation has diminished significantly. The Tanner crab fishery has been closed since 1994 and king crab since the early 1980s. In 2004, the Eastern Aleutian District local Tanner crab fishery reopened after a decade of closure. Several vessels that participate in that fishery are owned by Unalaska residents, but the restriction of 300 pots may limit the number of vessels that participate in the fishery (EDAW 2005).

Unlike many of the crab ports in the region, Unalaska also has extensive support services for the Bering Sea fisheries. The support services provided in Unalaska can support any vessel class in the pollock, crab, and other groundfish fisheries. As a result, the support services are heavily dependent upon the success of the groundfish and crab fisheries. To some extent, the fleet services also contribute to the diversification of the Unalaska economy, which helps to insulate the community from negative changes in any individual fishery.

In summary, the community of Unalaska is more economically diversified compared to other crab ports in the region, but is still heavily dependent on the groundfish and crab fisheries in the North Pacific. As noted above, the pollock fishery is the most important fishery resource for the community, contributing nearly 70 percent of the total value of processed seafood followed by crab at 20 percent of the total value of processed product.

4.4.2 Adak and the Adak Plant

The community of Adak, until recently, had no direct or indirect ties to commercial fishing because the island had been home to a Naval Air Station since the 1940s. However, the U.S. Navy closed the air station several years ago. The Aleut Corporation is trying to transform the island into a commercial fishing center in the Western Aleutians area of the Bering Sea.

Most commercial fishing deliveries to Adak are made to a single processing plant by larger vessels from outside the area since the community has a very limited small boat residential fleet. Cod, halibut, and black cod are the primary species processed. The community has also seen some crab and cod activity related to other companies, but these companies are not physically located in the community. Quantitative description of the processing activity (e.g., landings amounts, gross revenues, product output) in the Adak area cannot be included in the profile, due to data confidentiality restrictions.

Finally, Adak has been in the process of developing support service capabilities for the commercial fishing fleet. The port facilities in Adak can support a wide variety of large vessels. At-sea processors have used the port as a supply stop, as well as for transfer of product.

A few aspects of the Crab Rationalization Program are structured specifically to support Adak. First, ten percent of the TAC in the Western Aleutian Islands golden king crab fishery is allocated to a community entity representing Adak. This allocation is intended to support fishery development (including both harvesting and processing) in the community. Adak is also an intended beneficiary of the regional designation of one-half of the shares in the Western Aleutian Islands golden king crab fishery, which require crab harvested with those shares to be processed west of 174° West longitude and is the subject of this emergency action. Currently, Adak is the only community in the West region with a shore-based crab processing plant. It is worth noting that, even when the Adak plant was operational, processing of the West region allocation in Adak was not a certainty, since the rules in the fishery permit processing of those landings on floating processors, so long as they are located within the West region.

Adak Fisheries essentially stopped processing at its plant after the 2009 Federal Pacific cod B season and shortly after the start of the State of Alaska waters Pacific cod A season (mid-April). The plant is currently in “hibernation mode,” running off of limited power. In early September, Adak Fisheries

officially filed for Chapter 11 bankruptcy.⁴ The company had several unpaid creditors, and debts totaling several million dollars. The United States Bankruptcy Court for the District of Alaska (the Court) scheduled a hearing for November 9, 2009, in Anchorage, to consider the sale of the Adak plant and related assets to a new company, Adak Seafood, LLC.⁵ The proposed sale would include Adak Fisheries' fish processing equipment and other personal property housed in a building owned by Aleut Enterprises and leased to Adak Fisheries. Adak Seafood, LLC, is a newly-formed Delaware limited liability company affiliated with Drevik International. Kjetil Solberg, former owner of Adak Fisheries, is the majority (51%) owner of the company, and Drevik owns 49%.⁶ The offer from Adak Seafood is \$488,000, plus assumption of the debtor's entire obligation to its primary creditor, Independence Bank, of approximately \$6.7 million. The sale is to be free and clear of the claims, liens, and interests of all persons receiving notice of the motion, except Independence Bank; and the claims, liens, and interests of all such persons (excluding Independence Bank) shall attach to the sale proceeds to the same extent and in the same order of priority as existed in the underlying property.

On November 5, 2009, Aleut Enterprises, LLC, filed an objection with the Court regarding the proposed sale of Adak Fisheries. Aleut Enterprises objected to the sale on several grounds, asserting, in part, that the terms of the Sale Application cannot be met, as the Aleut Enterprises lease was terminated pre-petition. Aleut Enterprises also objected to the sale on the grounds that the lease to Adak fisheries was to expire on December 31, 2009 and that the deadline for extending the lease has passed.⁷

The hearing for the sale of Adak Fisheries' assets was held on November 9 and 10. On November 10, 2009, the Court approved the sale to Adak Seafood, LLC, with the original terms of the offer, and including other provisions.⁸ One provision requires that at closing, Adak Seafood shall pay \$250,000 to Aleut Enterprises, LLC, for rent due in 2009 and property damage. Adak Seafood is also required to escrow \$150,000, which is supposed to represent six months of the minimum annual rent due to Aleut Enterprises for 2010. In addition, Adak Seafood is required to pay \$13,000 to the City of Adak to satisfy sales tax obligations. Aside from the primary creditor (Independence Bank), there are several other entities whose claims and liens do not attach to the sale. These include but are not limited to the IRS, State of Alaska, the City of Adak, and Pentech Leasing.⁹ Overall, Adak Fisheries was several million dollars in debt, and all but a little over \$7 million was removed through the bankruptcy proceedings, as the new company (Adak Seafood LLC) will assume the \$6.7 million owed to Independence Bank. The total sale, including the debt to Independence Bank and other various expenses, was about \$8 million. The order granting the sale notes that the only other offer or expression of interest in the plant was by Trident Seafoods Corporation, which expressed an interest in purchasing certain assets, and after adjustment for differences between two offers (Adak Seafood and Trident Seafoods), Adak Seafood's offer was millions of dollars higher. Trident Seafoods offered \$2 million for the assets of Adak Fisheries, and its offer did not include assumption of the \$6.7 million of debt owed to Independence Bank.¹⁰

Under the order, the terms of the lease of the building, from Aleut Enterprises to the new owner, Adak Seafood, stay the same. Under its terms, the current lease expired on December 31, 2009. In October, Independence Bank filed a complaint in Bankruptcy Court, requesting an injunction to compel Adak

⁴Source: Seafoodnews.com.

⁵ Case No. 09-00623 DMD, United States Bankruptcy Court for the District of Alaska, October 9, 2009.

⁶Testimony by Drevik at November 10, 2009, hearing on Case No. 09-00623 DMD.

⁷Aleut Enterprises, LLC's Objection to Debtor's Motion to Sell Adak Fish Plant, Case No. 09-00623 HAR, U.S. Bankruptcy Court for the District of Alaska, November 5, 2009.

⁸Order Granting Debtor's Application to Sell Adak Plant Free and Clear of Liens, Case No. 09-00623 DMD, U.S. Bankruptcy Court for the District of Alaska, November 10, 2009.

⁹Pentech Financial Services, Inc., is the successor company to Pentek Leasing, which is a general equipment lessor for small and mid-ticket equipment.

¹⁰Memorandum Regarding Potential Acquisition, No. 09-00623 DMD, U.S. Bankruptcy Court for the District of Alaska, November 5, 2009.

Fisheries to exercise an extension of the lease and Aleut Enterprises to accept that extension.¹¹ Because the sale order specifically states that all parties reserve all rights with respect to the lease, the complaint is still before the Court. Thus, the parties must negotiate a lease for 2010 and beyond, or litigate the issue to conclusion. Given these circumstances, it remains uncertain whether a shorebased plant will be operational in Adak in the near or long-term future.

5 ANALYSIS OF ALTERNATIVES

For the 2009/2010 fishery, NMFS issued West designated IFQ and corresponding West designated IPQ for approximately 600,000 pounds of golden king crab. Without a processor in the West region, this amount of crab cannot be processed and, therefore, will not be harvested. This would result in direct economic losses to harvesters and processors. In addition, communities outside the West region with processing capacity may forego economic activity and revenues that could be accessible, if the delivery requirement was relieved and these golden king crab were permitted to be delivered outside of the West region. The proposed action to relieve a regulatory restriction would potentially provide economic benefits to harvesters with West designated IFQ, processors with West designated IPQ, both region's communities, and U.S. consumers (i.e., directly, through increased supplies and price effects for golden king crab, or indirectly, by providing downward pressure on prices of competing consumer products).

5.1 Effects on harvesters

For the 2009/2010 fishery, NMFS issued West designated IFQ and corresponding IPQ for approximately 600,000 pounds of golden king crab. Preliminary information indicates that this amount of crab could represent approximately \$1.2 million in ex-vessel value to the harvesters, if fully harvested. Under status quo, harvesters would be expected to forego this revenue, because they could not harvest this crab and deliver it to a processor. Forgone revenues to the harvesters would be less than this total amount, because costs associated with harvesting the allocation would be avoided.

Under the proposed action, harvesters would be permitted to land their West designated IFQ harvests outside of the West region. So, despite the absence of processing capacity in the West region, these crab would be harvestable and deliverable. Therefore, the removal of the West region landing requirement would be expected to provide a clear and direct benefit to IFQ holders, crew, and vessel owners that would otherwise be unable to complete the harvest of allocations designated for West region delivery.

It should be noted that circumstances that are not mitigated by this action may prevent harvesters from fully harvesting the TAC. Given the low price of golden king crab, it is possible that the full TAC may not be taken; however, it is believed that harvesters have preserved their ability to use the arbitration system this year. So, if processors are unwilling to agree to a price which is acceptable to the harvesters, it is possible that harvesters could use the arbitration system to establish a delivery contract. While an arbitrator cannot compel an IPQ holder to accept deliveries, a contract for delivery could form the basis for a damages claim, should an IPQ holder refuse deliveries. Whether IPQ holders might refuse deliveries and IFQ holders would be willing to use the arbitration system to compel processors to accept deliveries is not known. Likewise, whether the terms established by the arbitrator meet the minimum economic needs of the harvester, thus, providing sufficient economic incentive to catch the quota, is also uncertain.

¹¹Independence Bank v. Adak Fisheries, LLC, et al., Adversary Proceeding No. 09-90031, filed October 15, 2009.

5.2 Effects on the processors

Under status quo, IPQ holders, with West designated IPQ, would lose the potential profit from selling products from the approximately 600,000 pounds of crab harvests required to be delivered in the West region. A small portion of this IPQ is held by the plant operator from Adak. The remainder is held by processors with no processing capacity in the West region and little or no crab processing history in the West region. Since the Adak plant is closed and unlikely to open for the remainder of the season, and no other West region processing capacity seems likely this season, these IPQ holders are likely to only gain the economic benefit of this crab if the exemption is provided. The action would benefit plants outside of the West region (most likely in Unalaska/Dutch Harbor) that would take delivery of West designated golden king crab. The action is unlikely to have any impact on the Adak plant, as that plant is not likely to be operational this season. Given the large size of the Unalaska/Dutch Harbor plants that are likely to receive these deliveries, and the relatively small size of the West region allocation, the benefit to these processors is likely to be relatively small.

5.3 Effects on communities

The effects of this action on communities and community sustainability are relatively small. In considering the effects of the action, it is important to distinguish effects arising out of the action from effects that would arise independent of the action. Even with the West region delivery requirement, no processing would occur in Adak as that plant is closed and unlikely to open to accept deliveries from the fishery. Floating processors do not appear to be viable and, if introduced, might choose to operate outside of any community to avoid local taxes, operating costs, and logistical concerns. Consequently, no community in the West region is likely to be directly affected by this action.

Relieving the West region delivery requirement would likely result in an additional 600,000 lbs of golden king crab being delivered to Unalaska/Dutch Harbor for processing, increasing economic activity, the income generated in that community, and the community's tax revenues. Therefore, effects of this action would likely be beneficial to Unalaska/Dutch Harbor and have no direct economic effect on any other community.

5.4 Effects on consumers

Consumers may benefit from the proposed action alternative, as it is likely to result in more crab being made available to the market than would have been the case without the proposed exemption. This additional crab is relatively nominal and is unlikely to have any observable price effect. The additional supply may, however, play a role in stabilizing prices of competing products, by introducing additional supply options to the marketplace.

5.5 Effects on management and enforcement

The effects of this action on management and enforcement burdens are minimal. Removing the West region delivery requirement would relieve agency staff from overseeing compliance with that requirement; however the monitoring and enforcement costs associated with this requirement are relatively minor and unlikely to substantially affect management and enforcement associated with the fishery.

5.6 Net benefits to the Nation

This action has the potential to have a small positive net benefit for the Nation. The circumstances that justified the constraint on deliveries have changed, and, at least temporarily, the constraint no longer achieves the goals that led to its incorporation in the Crab Rationalization Program. The constraint was

originally justified on economic welfare and distributional grounds, and not by market failure considerations. Therefore, lifting the constraint should relieve an unnecessary and unanticipated burden on the region's economic activity, enhance resource management and conservation, facilitate the overall harvest in this fishery, and, thus, increase the value the Nation receives from the Western Aleutian Islands golden king crab resource.

6 NATIONAL STANDARDS

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, as applicable.

National Standard 1

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

Nothing in the proposed alternatives would undermine the current management system that prevents overfishing. The action would aid participants in the fishery in achieving optimum yield from the fishery by facilitating harvest of the entire TAC.

National Standard 2

Conservation and management measures shall be based upon the best scientific information available.

The analysis draws on the best scientific information that is available, concerning the Western Aleutian Islands golden king crab fishery. The most up-to-date information that is available has been provided by the managers of these fisheries, as well as by members of the fishing industry.

National Standard 3

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination.

National Standard 4

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed alternatives would treat all participants the same, regardless of their residence. The proposed change would be implemented without discrimination among participants and is intended to contribute to the fairness and equity of the program by allowing participants to harvest and process their allocations of the TAC.

National Standard 5

Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

This action improves efficiency of the fishery by allowing deliveries outside of the West region, where those landings are economically infeasible. The primary purpose of this action is to ensure that existing allocations of golden king crab are fully utilized, which is broader than the efficiency benefit arising out of the action.

National Standard 6

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the alternatives would be expected to affect changes in the availability of Bering Sea and Aleutian Islands crab resources each year. Any such changes would be addressed through the annual TAC setting process, which is not affected by the alternatives.

National Standard 7

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This action will minimize costs by removing a restriction that prevents harvesters and processors from realizing the value of their IFQ and IPQ, respectively. This action will not duplicate other actions.

National Standard 8

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action accounts for the importance of fishery resources to fishing communities by providing the opportunity for a large portion of the golden king crab TAC to be processed in a community outside of the West region. The action has no effect on communities in the West, as those communities are without processing capacity to support these landings. In the absence of the action, this crab would remain unharvested and unprocessed.

National Standard 9

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Allowing the full harvest of the golden king crab IFQ would result in some bycatch, however, this bycatch is monitored by observers and considered in setting the TAC for this fishery.

National Standard 10

Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

This action has no direct effect on safety of participants in the fishery.

7 REFERENCES

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