



February 28, 2017

Mr. Dan Hull, Chairman
North Pacific Fishery Management Council

Re: BSAI Tanner Crab Custom Processing Use Cap

Chairman Hull,

I am submitting the following comments and recommendations on behalf of Blue Harvest Fisheries, a Delaware Corporation, which is working to establish a competitive presence in the BSAI crab processing sector. We are currently developing a new multi-species operation that will include crab processing capacity.

Last June the Council expedited action to establish a Custom Processing Use Cap exemption for Tanner Crab because the pool of processors, and their associated use caps, was not sufficient to prosecute the fishery. At that time, several industry members testified that they accepted the need for this action, but encouraged the Council to undertake a more comprehensive review of processing sector ownership, use and facility caps¹. We support this review, and encourage the Council to expand it across all rationalized crab fisheries and regions.

The original BSAI King and Tanner Crab ("KTC") FMP established a 30% Processor Quota ownership, use and facility cap. Over time a series of Custom Processing Use Cap exemptions², combined with consolidation within the processing sector, have resulted in just three companies now controlling 99% of all crab processing³. **This has created an impenetrable barrier to new entrants, stifled new product development and given those three entities control over crab markets well beyond the Council's intent.**

Prior to the 2016/17 season, Blue Harvest Fisheries had significant commitments from independent IPQ share-holders, Catcher-Processor and CDQ share-holders and B/C share-holders to work with them to process and market their crab. All three existing processors refused to provide Blue Harvest custom processing services, or, in most cases, would only provide custom processing services if the independent quota holder also granted full control of the marketing of the crab to the processor. **The sort of market control - for both custom processing services and the sale of finished product - deserves a closer look by the Council.**

As noted below, the possibility of these problems was forecast in the RIR/IRFA for both KTC Amendment 27⁴ (June 2008) and KTC Amendment 47 (June 2016).

Recommendation:

1. That the Council modify existing Processing Use Cap exemptions so that those exemptions are only allowed in the event that there are fewer than 4 (four) processing entities available for each fishery and region with the following exceptions:
 - For Opilio in the North Region, in accordance with the Magnuson-Stevens Act⁵ ;
 - For Western Aleutians Golden King Crab in the West Region.




This will assure a new entrant has access to at least 10% of the Class A IFQ quota, subject to the same binding arbitration regulations as all other Eligible Processors.

2. That the Council establish a pre-season survey to determine the number of independent processors for each fishery and region to determine if the Custom Processing Use Cap exemption is warranted. The Council may want to look at the "Emergency Relief from Regional Landing Requirements" program as an example of an industry/community pre-season processing capacity evaluation process, though some stakeholders feel that it is inadequate.

3. That the Council consider expanding the Economic Data Report (EDR) process to more closely look at the issues of processor consolidation and market access. Please note that the Council may have to review its standard for aggregation and dissemination of data under the crab program; which requires five reporting entities rather than the more typical three.

By adhering to the 30% use and facility caps, the Council will be creating an opportunity for a new entrant, although other challenges still exist. We ask that the Council take this important step to restore competitiveness and help spur new product development in the BSAI crab fisheries.

Sincerely,



Jeffrey W. Davis
CEO
Blue Harvest Foods, LLC

¹ "The new sub option was added to provide the Council the ability to temporarily exempt *C. bairdi* crab IPQ use caps for custom processing, while also allowing time for a holistic examination of the BSAI crab processing consolidation to determine the long range impacts of the proposed exemption." RIR/IRFA, KTC Amendment 47, page 5, June 2016.

² Magnuson Stevens Act (January 2007), KTC Crab Amendment 27, KTC Crab Amendment 47.

³ "Facilities owned by Maruha-Nichiro Corporation, Trident Seafood's (and) UniSea Seafood's processed 99 percent of the BSAI crab in 2015." RIR/IRFA, KTC Crab Amendment 47, page 27; June 2016.

⁴ "...large processors in a fishery are the primary beneficiaries of this action (custom processing exemptions). (Small) Processors not limited by the cap could find that the exemption constrains their ability to grow, by removing shares from the already limited market. In some instances, small processors that choose to have their shares custom processed could benefit from this action, but that benefit is likely to be relatively small in comparison to the benefits to the larger entities the use the exemption to consolidate processing activity beyond the current (30%) cap." RIR/IRFA, Amendment 27, page v and vi, June 2008.

⁵ PL 109-479 Section 122 (e) USE CAPS.— (1) IN GENERAL.—Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Federal Regulations, custom processing arrangements shall not count against any use cap for the processing of opilio crab in the Northern Region so long as such crab is processed in the Northern Region by a shore-based crab processor.

Signature Seafoods, Inc.

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February 22, 2017

Mr. Dan Hull, Chairman
Mr. Chris Oliver, Executive Director
North Pacific Fishery Management Council

Re: Bairdi Custom Processing Use Cap Exemptions

Gentlemen,

I am submitting these comments on behalf of Ocean Fresh and Signature Seafoods, regarding the Council's previous action (Agenda Item C-4, June 2016) on Bairdi Custom processing Use Cap Exemptions and in particular in support of alternative 3 - "apply exemption only in years when capacity to process is not sufficient (i.e., when there are less than 4 processors." In addition, we are requesting that the Council expand alternative 3 to include an examination of all BSAI crab program fisheries and regions.

Last June I testified to the Council that our company would like to enter the Bering Sea crab processing sector, and that we have an appropriate platform to become a competitive processing entity. However, we find the current regulations a barrier to entry; in particular the custom processing use cap exemptions that allow the existing processors to process 100% of the available crab.

The BSAI crab program was carefully developed to foster competition in the processing sector. As the Council's own analysis documents, the custom processing use cap exemptions have allowed just three processing entities to gain control of 99% of all crab processing, creating an almost insurmountable barrier for new entrants.

Alternative 3 in the Council's June 2016 motion would limit these three entities to 90% of the A share deliveries, and grant a custom processing use cap exemption only "when there are less than four processors". Adopting this alternative will remove one of the most significant obstacles for new or returning entrants like ourselves.

This issue transcends the Bairdi fishery, so we also ask the Council to develop a broader set of options and alternatives that encompass all BSAI crab fisheries and regions. Although we believe that the North Region and the West Region may continue to need special consideration, this is an opportunity for the Council to thoroughly review the current structure and performance of the processing sector, and the impacts that consolidation has had on new entrant opportunities, product development and market access.

Sincerely,



William R. Orr
President