



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668*

December 2, 2013

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Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Chris:

In February 2013, the North Pacific Fishery Management Council (Council) recommended Amendment 44 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 44 would modify the right of first refusal (ROFR) provisions in the Bering Sea and Aleutian Islands crab rationalization program. The ROFR provides specific community entities an opportunity to purchase community-designated processor quota share (PQS) or annual individual processor shares (IPQ) proposed for sale subject to the same terms and conditions. The FMP specifies the provisions required in a ROFR contract between a community entity and PQS/IPQ holder. Amendment 44 would modify the contract provisions in the FMP. We note that PQS/IPQ holders and community entities may need to establish new or revised ROFR contracts to be consistent with Amendment 44. When combined with proposed regulatory requirements, a ROFR contract consistent with Amendment 44 would be required before the National Marine Fisheries Service (NMFS) would issue annual IPQ or approve PQS or IPQ transfers. We believe that these proposed requirements are necessary and consistent with Council intent. We do not believe action is required by the Council. However, we wished to advise the Council and public of our proposed approach, and provide an opportunity for input from the Council. The following paragraphs provide additional detail.

Amendment 44, and the accompanying proposed rule would implement three actions. Under Action 1, the Council recommended amending the FMP to increase the time available for a community entity to provide notification of its intent to exercise a ROFR from 60 days to 90 days, and to increase the time allowed for a community entity to perform under a ROFR contract from 120 days to 150 days. Under Action 2, the Council recommended amending the FMP to: (1) remove an existing provision that states a ROFR lapses if a processor uses its annual IPQ outside a designated community for three consecutive years; and (2) require that a PQS holder establish a new ROFR with a community entity even if a community entity that held a ROFR privilege failed to exercise a ROFR. Under the second provision of Action 2, the PQS holder would designate the community entity that will hold the ROFR privilege. Under Action 3, the Council recommended regulatory provisions that would create several reporting requirements for

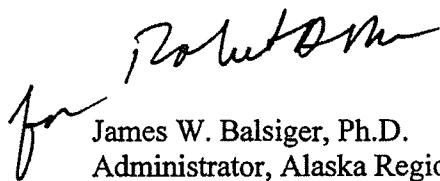


PQS/IPQ holders. These reporting requirements are intended to provide community entities and NMFS with better information concerning the use of PQS and IPQ, and ensure that all affected entities are aware of any proposed actions that could trigger a ROFR.

Under the proposed regulations needed to implement Action 3, NMFS would require that the PQS holder provide NMFS with confirmation that a required ROFR contract exists between a PQS/IPQ holder and the appropriate community entity. This confirmation would be required in the annual IPQ permit application, and in any PQS and IPQ transfer applications. To be consistent with Amendment 44, all ROFR contracts would need to contain the revised terms and conditions described under Action 1 and 2. Depending on the specific provisions contained in an existing ROFR contract, a PQS/IPQ holder and a community entity may need to establish a new or revised ROFR contract. By including the notification as part of these applications, NMFS realizes that if an applicant is unable to establish a revised ROFR contract with a community entity and provide confirmation to NMFS, an application would be considered incomplete. In that case, NMFS would withhold issuance of annual IPQ, or not complete the transfer of PQS or IPQ, depending on the application. We note that the analysis prepared for Amendment 44 did not include a discussion on the potential implications of this proposed regulatory approach and the potential effects on negotiations between community entities and PQS/IPQ holders. NMFS intends to revise the analytical documents prepared to support Amendment 44 to describe and assess this approach. That revised analysis will be provided for public review during public comment on Amendment 44 and the proposed rule.

Staff will be available at the Council meeting, if the Council has additional questions or concerns.

Sincerely,


for James W. Balsiger, Ph.D.
Administrator, Alaska Region