

Owners profit, but crew feel the pinch of crab catch shares

By Andrew Jensen

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Long before there was a bank bailout on Wall Street, there was a boat bailout in the Bering Sea.

While the Bering Sea Aleutian Islands crab rationalization program is approaching its five-year review, the program implemented in 2005 is still under fire from the critics who first protested its approval in 2002, and the encouragement of catch shares as a fishery management tool is now the official position of the U.S. government.

Catch share programs allot quota shares as a percentage of the total harvest to individuals or corporate entities based on their participation history in a fishery. Advocates, who now include National Oceanic and Atmospheric Administration Director Jane Lubchenco, say the tactic promotes sustainability, economic efficiency and safety for the fleet while preventing overfishing.

In the Bering Sea, a catch share system was put in place by the North Pacific Fisheries Management Council to reduce the size of the fleet and end the "derby" fishing, so named for the frenetic pace of season openings when fishermen with no individual limit attempt to capture the largest share possible of the total harvest.

To reduce the fleet, the council allocated shares to vessel owners, many strained financially after chasing three years of low crab harvests from 2000 to 2003 and carrying multiple boat mortgages to maintain their history in the fishery.

"People were fishing for history and quota, and going bankrupt in the process," said Arni Thomson, executive director of the Alaska Crab Coalition, which supports the catch share program and represents about 50 vessel owners. "A lot of boats were on the verge of bankruptcy going into the program. It prevented insolvency in many cases."

Those allocated quota were able to take their boats off the water, either selling them or paying off loans with income from selling or leasing their shares.

Share leasing has given rise to the term "mailbox fishermen," referring to a class of vessel owners who no longer fish but collect 50 percent to 70 percent of the value of their allowed catch as lease rates from the vessels that harvest their quota.

Shawn Dochtermann, executive director of the Crewman's Association, a 24-year veteran of the crab fishery and one of the original critics of catch shares, said preventing bankruptcy for a few boat owners by giving them catch shares distorted the natural market, rewarded bad business decisions and prevented new entrants to the industry by creating a closed class of ownership defined by the initial allocation.

Owners of multiple vessels were in favor of the program in 2002, Dochtermann said, but the opinion wasn't uniform.

"Another group of fishermen said, 'Why should the government do a buyout of an industry when the natural progression is boats go bankrupt and other guys get to proceed?'" Dochtermann said. "From 1966 to 1995, you'll find that in king crab, there were already two crashes. The vessels always came back in. The natural progression was the vessels had to leave. It's like any business."

Lubchenco said eliminating the boom-and-bust cycle of fisheries is a top goal of catch share programs.

"In some cases, that's going to mean fewer boats and fewer fishing jobs because there has been too much in the past," she said. "The goal is not to sustain the level of fishing happening now. The goal is to transition to a level that can be sustained and healthy through time, and provide better jobs and more secure jobs and a more secure source of income for not only those individuals but for communities."

Lubchenco's rationale for catch share programs goes to the heart of the single greatest source of resentment for those displaced by the rationalization program. Those who have lost jobs were forced out by federal government action, not the market forces that may have eventually reduced the crab fleet.

Dochtermann said the crab fleet became overcapitalized as a direct result of the prospect of a catch share program following the implementation of a quota system for Gulf of Alaska halibut and sablefish in 1995. Taking short-term losses on crab boats became a trade-off with an anticipation of eventually receiving the valuable quota shares.

"It was all designed to get that piece of paper," Dochtermann said.

From 1998 until crab catch shares were approved in 2002, some 43 vessels joined the Bristol Bay red king crab fishery, which fetches the top price of all Alaska crab at about \$4 to \$5 per pound. With the so-called "race for history" over, 10 vessels joined the king crab fishery from 2002 to 2005.

Known as "crab ratz," the program was passed through Congress in 2003 as a rider to an appropriation bill by former Sen. Ted Stevens.

Under the program, 97 percent of the individual fishing quota, or IFQ, shares were allocated based on catch history to holders of limited license permits that were required to operate in the fishery pre-rationalization, and 3 percent were allocated to captains based on their participation history. Rank-and-file crew received no shares.

Processors also received quota shares totaling 90 percent of the harvest that match up with "A" shares held by harvesters. "A" shares held by harvesters must be delivered to designated processors, locking in their historic market share. The aim of processor quotas was to protect the companies' financial investments in the fishery and the communities where they operate.

Ten percent of the harvest IFQ is allocated as "B" shares that may be delivered to any processor. Before any allocations are made to harvesters or processors, 10.7 percent of the total allowable catch is allocated as Community Development Quotas to Western Alaska villages to allow them to participate in the fishery.

The North Pacific council, a division of NOAA governing the federal waters off the Alaska, ~~Washington and Oregon~~ coasts, is considering multiple amendments to the crab program during the review process, including increasing crew shares. Eight regional councils manage federal fisheries from Guam to the Caribbean.

A number of components remain unique to the Bering Sea crab program eight years after the council approved it and only 15 catch share programs exist in the eight NOAA-governed districts covering nearly

300 fisheries. Under Lubchenco, the agency has sought \$54 million to help implement 37 new programs that, according to council officials, inherently involve the government picking winners and losers through share allocations.

Crabbers, communities feel pinch

The transition to rationalization was anything but gradual.

In the first year of the program covering the 2005-06 crab season, the fleet fishing Bristol Bay red king crab shrunk from 251 vessels to 89 and Bering Sea snow crab vessels were reduced from 167 to 78, wiping out hundreds of crew jobs and millions in payroll that was often spent and then multiplied in fishing communities like Kodiak and Homer.

Another concern is crew pay for the jobs that remain, which has declined dramatically as a percentage of the catch while increasing overall as fewer crew harvest a greater number of crab.

Supporters of the crab program acknowledge crew are paid a smaller percentage but say the remaining jobs are better than the ones lost because crew generally know how much they'll be paid before leaving the docks as opposed to the uncertainty of derby fishing.

In 2004, the final year pre-rationalization, crewmembers who harvested the highest quartile of crab in the Bristol Bay fishery each netted an average of \$19,568, according to research prepared by North Pacific council economist Mark Fina.

Counting the captain, a crew of six received 36 percent of the catch across all vessels in 2004.

In 2007, a crew in the highest harvest quartile received \$39,734 each on average. However, counting the captain, the crew received 16.1 percent of the catch. The average harvest for the top quartile of vessels bulged from 97,283 pounds to 482,900 pounds, meaning crew were paid about twice as much to harvest nearly five times more crab. From the third quartile to the fourth quartile, a crew member made an extra \$7,600 for harvesting an additional 188,000 pounds of crab.

"The take home message is they make a lot more money," said Thomson. "They are fishing more days, they're making more per day, they're making more per year even though their percentage of the gross revenue is less."

The assertion by Thomson and other catch share proponents is that working longer and harder at one of the most dangerous jobs in the world for a smaller percentage is a better job. That idea doesn't sit well with Dochtermann.

During a December teleconference after NOAA released the draft of its new catch share policy — one of Lubchenco's first priorities after being confirmed in 2009 — the new director said that most jobs lost are "marginal jobs where people are squeaking by."

"That's not for her to decide," Dochtermann said. "What if they enjoy fishing and it's not about money? Sure we like the money, but we love to fish. You take it away from some of them and they fold."

In the way the catch share program has evolved, crew make less as a percentage the more they harvest because of lease rates as high as 70 percent of the vessel catch charged by share owners. They also have much less leverage to negotiate pay than in the past, with fewer jobs available.

"Arni Thomson paints a facade to the truth of crew compensation," Dochtermann said. "It doesn't matter how much you catch, you're getting less compensation ratio. The crew are taking it in the shorts. They're being ripped off."

In questioning the validity of the council's crew pay data, Dochtermann cited the example of Corey Eisenbarth, a veteran crabber who worked on the Cornelia Marie, a vessel that's been featured on the Discovery Channel hit "Deadliest Catch."

During the 2008 king crab season on the Cornelia Marie, Eisenbarth was paid \$23,700 from king crab season after the vessel harvested 507,000 pounds of crab with an ex-vessel value of around \$2.5 million.

Eisenbarth logged 45 days of dock time prepping the vessel for fishing and another 68 days on the water for a share that amounted to less than 1 percent of the catch. A pre-rationalization standard crew share of between 5 percent and 6 percent would have been between \$125,000 and \$150,000.

Eisenbarth, who has been a commercial fisherman for 27 years, said he was recently going through old settlement sheets while logging his sea time and the 2008 payment still "brings tears to my eyes."

Eisenbarth said his former crewmates Jake and Josh Harris — the sons of the late Cornelia Marie skipper Phil Harris — received \$16,000 as a crew share from the same amount of quota in 2009.

"The crew share gets lower every year," Eisenbarth said. "Lease fees (for king crab) started at 50-50, because they didn't want to look bad. Now it's almost 75-25. They just keep taking more and more now that they can see there's no way to reverse rationalization."

Thomson and Dochtermann agree that high lease rates hurt the industry. Both want the council to look at the issue of leasing during its review process.

Lease rates for snow crab quota average about 50 percent while king crab quota lease rates average about 70 percent.

"We didn't anticipate that the lease rate on king crab would get that high," Thomson said. "On snow crab, it is comparable to lease rates on other fisheries. The lease rate on king crab is high, but it can be caught pretty fast. There's quite a bit of competition for those quota shares."

"It's a real concern of the Crab Coalition. I can tell you that harvesters are starting to have some serious discussions about industry standards on lease rates."

Safer seas?

Former Alaska Sen. Stevens said he pushed through the crab program because he was concerned about safety in the Bering Sea fishery, where an average of eight people died each year between 1990 and 1998.

"The loss of life and everything that takes place was too much," he said. "My main goal was to eliminate the race for fish, and we succeeded."

Safety through eliminating derby fishing is one of the chief arguments for instituting catch shares, with the theory that fishermen whose rights to harvest are assured will be able to plan their season with more certainty and avoid bad weather or risky decisions.

Granted, there have been no fatalities in the Bering Sea since the crab program began. However, there was only one fatal incident pre-rationalization from 1999 to 2005, after the Coast Guard developed regulations for mandatory dockside inspections to stop vessels from overloading.

Overloading vessels was the main reason for capsizing incidents, and the F/V Big Valley that sunk in 2005, killing five, made it out of Dutch Harbor without undergoing inspection and was "grossly overloaded" according to a subsequent investigation.

Stevens dismissed the suggestion that the "race for history" was behind the unsafe derby fishing or the overcapitalization of the crab fleet.

"There was an annual race for the fish when no one knew if this was going to put in place," he said.

Opinions on whether crew safety has actually been enhanced are mixed. The pace of fishing is slower under rationalization, but processor deadlines have created a different kind of racing to avoid price deductions for missing fixed delivery times.

Under the cooperative system, quota owners pool their shares and may freely transfer shares among vessels, which allows boats to avoid penalties at the docks for going over their limit and to stack quota on a smaller number of vessels.

Pulling more pots and spending more time on the rough waters of the Bering Sea does not lessen risk, Dochtermann said, and fewer boats on the water through rationalization means fewer "Good Samaritan" boats nearby to aid a vessel in distress.

"Now, to make a forced delivery date, a skipper can run his crew through the whole co-op's pots to make a delivery date," Dochtermann said. "You're forcing labor to work no matter what the weather and more gear is forced down their throat. It's not safer. If anything, it's less safe."

Eisenbarth and Dochtermann said the rationalization program has chased the most experienced crew members out of the industry, leaving less qualified deckhands more likely to make mistakes that result in injuries.

Eisenbarth said his hip was dislocated in 2005 when a rookie crewmember operating the hydraulics pulled the wrong lever and pinned him against the rail while he was throwing hooks.

"Now I'm limping for the rest of my life," Eisenbarth said. "We used to have bigger, stronger guys in it. Now you have 130-pound, little guys who will work for 2 percent."

Eisenbarth said it is no longer possible to work your way up from deckhand to vessel captain or owner because of the steep price of entry. Entering the fishery requires purchasing or leasing shares from owners who were originally gifted the allocation, a barrier that can be too steep to overcome with the price of a pound of king crab quota now going for between \$25 and \$30 per pound.

"You'd have to fish it for six years before you made any money," he said. "Well, hell, who can afford to do that? The dream of running a fishing boat is dead."

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Groundswell Notes:

$(251-89) + (167-78) = 162 + 89 = 251$ boats x 6 crew/boat = 1,506 seasonal jobs, at 5 per boat = 1,255 jobs. But we count around 1,100 crew who lost their seasonal jobs, many paying \$30,000 to \$50,000 or more/season during pre-Ratz.

$(36\%-16\%) = 20\% \times \175 mln annual crab fishery = approx. \$35 mln less per year to crewmen segment post-Ratz. 5 years into the program =~ **\$175 million** taken from crew component by IFQ sealords charging high lease fees off the top, if for entire fleet & fishery. Plus, when IFQs were issued, crew component got cut out of \$360 to **\$400 million** (the initial value of quota giveaways that vessel owners took instead, since only 3% went to skippers, none to crew).

Consider LAY SHARE law of 46 U.S.C. §10601, and you can see the "take home message is" crab crewmen have been robbed – otherwise the banks and "investors" would not be able to play their "mailbox" games. The Crab Coalition's major concern is that of legal liability, as its members raised the lease rates so high, so fast, it got attention.

Amendments under consideration may affect crew pay, processor quota

By Andrew Jensen

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Increasing crew shares from 3 percent to 10 percent of the total allowable catch is one of several amendments to the Bering Sea Aleutian Islands crab rationalization program.

The amendments will be considered after the five-year review is complete in late 2010 and appear designed to at least look at concerns raised since implementation over crew compensation and the level of protection given to processors through the unprecedented allocation of quota shares.

Catch share programs involve allocating fishing privileges to harvesters and vessel owners; the Alaska crab fishery was the first, and remains the only, fishery to allocate processors buying rights to the harvest.

Ninety percent of the total harvest are "A" shares, which must be delivered to owners of processing quota; the remainder may be delivered to any processor. The 90/10 split was designed to leave intact some bargaining power for harvesters.

The initial allocation of individual fishing quota, or IFQ, to harvesters gave 97 percent to vessel owners and 3 percent to captains as crew shares. Crewmembers have protested this structure since the North Pacific Fisheries Management Council approved the program in 2002, and the consideration of increasing crew shares as high as 10 percent reflects that concern.

Processors have weighed in on converting an additional percentage of owner A/B shares to crew shares. Like B shares, crew, or "C", shares can be delivered to any processor and a larger percentage of the total catch as C shares would cut into the 90 percent of the harvest they are currently entitled.

One suggestion from processors has been to convert some of the processor quota to crew quota, which would allow them to be compensated by selling the shares to crew.

Under the Magnuson-Stevens Act governing federal fishery management authority, fishing privileges are not property rights and can be revoked or reallocated at any time and without compensation to shareholders.

The level of protection afforded to processors is under consideration by the council, which adopted processor quota shares in 2002 in the face of contrary opinion from two of three studies it commissioned, the U.S. Department of Justice and the Government Accountability Office.

The GAO found no proof processors are inherently damaged by a program that allocates catch shares to individuals, the Justice Department found processor quota to be anticompetitive and one study conducted by independent economists for the council found that processors realize greater net benefits of rationalization the higher the ratio of A/B shares.

The study found processors would receive the entire net economic benefit of rationalization if 100 percent of deliveries were mandated, rather than the current 90 percent.

"The idea of thresholds in the first place in the current program was, at some point, they have adequate protection and once they reach that threshold, harvesters should be allowed to take harvest elsewhere," said council economist Mark Fina. "The question is, what is that level of protection?"

Crewman's Association Executive Director Shawn Dochtermann said the proposed amendments don't go far enough in correcting the initial inequalities of the program.

Dochtermann said crew should be restored to their full, historical rate of compensation, which was in the range of 35 percent to 40 percent of the catch pre-rationalization.

Crew would not receive quota individually, Dochtermann said, but the shares would be held in a pool of the total allowable catch to assure crew would be guaranteed a fair rate of compensation before leaving the dock.

He said lease rates on fishing quota — which have swelled to 70 percent or more on king crab — should be capped at vessel owners' traditional profits. Dochtermann, who fishes for his father, Lu Dochtermann, said owner profits usually came out to 33 percent to 35 percent after crew was paid and other expenses for maintenance, taxes, insurance and mortgage payments were deducted.

Dochtermann said processor quota should be eliminated entirely and share ownership should convert from a current in-perpetuity status to limited duration access permits good for a period of 10 to 15 years to allow for business planning but still regularly allow a number of shares to become available for new entrants.

Dochtermann said share ownership should require owner-on-board status within five years, and that those who don't meet requirements should be forced to divest shares at low rates "because they got it for free."

A crew loan program was to be a part of the original program in 2005, but only recently was approved with \$8 million to be made available for crew to purchase shares, but it may not take effect until Sept. 30, too late for anyone to take advantage of for the king crab season beginning Oct. 15.

Opponents have called the amount made available insignificant based on the current going rates for pounds of quota, which are ranging between \$25 and \$30 per pound for king crab.

At that price, \$8 million would purchase less than 300,000 pounds, around 1.5 percent of the total catch in 2009.

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Groundswell Notes:

The proposal is to give an additional 2%, 3% or 5% to "C" shares and have those crewmen (and skippers) pay for what were originally giveaway quotas (loans or purchases thereby cash-inflowing to the vessel owners). There are particular IFQ holders who have family and crew on their boats, ready to scoop up this meager percent, backed by either owner loans or bank loans backed by the government loan guarantees. This will happen so swiftly that the majority of disenfranchised crewmen will never have a chance to get any quota. It's a red herring to draw attention off the tracks of the rightful crew shares had historical participation in the actual fisheries been the benchmark of original quota allocations. Let's see, \$8/\$400 is 2% of what the crew should have been "given" in the first place (if one assumes it is even legal to privatize the public commons, at all).

Crew pool shares could actually be simply used as a mechanism to bring Trip Settlements back into line. And Groundswell suggests the most straight-forward legislation would be that no leases may come off-the-top before crew settlements and the crew should have its lay share contract rights upheld. It would serve the goal of erasing the incentives for Resource Cursed policy and corruption, and help reduce Regulatory Capture of the fish Councils.

Legal issues linger around crab rationalization

By Andrew Jensen

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Legal issues linger around the Bering Sea Aleutian Islands crab rationalization program, touching on federal standards for allocation of fishing privileges and two major components that have yet to be implemented in any of the other 14 catch share programs around the nation.

Both components — processor quota shares and binding price arbitration — drew questions from the U.S. Department of Justice's antitrust division, which recommended in 2003 and in 2004 that the National Oceanic and Atmospheric Administration not adopt either measure for the Alaska crab fishery.

Captains and crew who received about 36 percent of the vessel catch pre-rationalization feel they were disenfranchised in the initial allocation process and say the council's share distribution of 97 percent to vessel owners, 3 percent to captains and nothing to the crew did not recognize their historical participation in the crab fishery and violate the Magnuson-Stevens Act requirement that any quota allocation must be "fair and equitable."

They further argue that shares gifted in perpetuity to vessel owners and processors operating before the program took effect in 2005 have acquired the characteristics of private property rights. Quota has been used as collateral for loans, contested in divorces and passed on through wills.

While the Magnuson-Stevens Act allows shares once allocated to be revoked or redistributed at any time without compensation, the council has expressed reluctance to reallocate shares to correct initial inequities because of the subsequent investments of quota owners, who in many cases have used initial quota as collateral to finance the purchase of more shares.

"These practical barriers to reversing catch share programs to remedy hardships suggest that catch share programs should be approached with caution," Mark Fina, economist for the North Pacific Fisheries Management Council, said in testimony to Congress March 16.

The unique aspects of the crab program approved by the council assure processors rights to purchase 90 percent of the total catch and a set up an arbitration system to resolve price disputes between harvesters and processors during preseason negotiations.

In testimony Feb 24, 2004, to the Commerce Committee, which governs NOAA, Deputy Assistant Attorney General J. Bruce McDonald said processor quota was not necessary to achieve program goals of consolidating the crab fleet and could produce an anti-competitive environment by guaranteeing market share to a small number of companies.

Four entities in the Bering Sea crab fishery — Trident Seafoods (23.2 percent), Icicle Seafoods (10.6) and Japanese conglomerates Maruha-Nichiro (29) and Nippon Suisan (21.6) — together control nearly 85 percent of the buying shares.

Maruha-Nichiro owns Westward Seafoods, Peter Pan Seafoods and a 65 percent stake in Alyeska Seafoods. Through its American subsidiary UniSea, Nippon Suisan purchased Royal Aleutian Seafoods in August 2005, two months before rationalization began, acquiring its 45 percent share in the Eastern Aleutian Islands golden king crab fishery.

Together, two Japanese conglomerates own 77.8 percent of the processor quota in the Aleutian Islands crab waters, an exception to the 30 percent processor cap reflecting the historic lack of participation by processors in the fishery.

McDonald added that the sharing of information between competitors in an arbitration process violated Section 1 of the Sherman Anti-Trust Act, regardless of mitigating steps taken in the program design to allay anti-trust concerns.

McDonald called the arbitration a "poor substitute" for competitive pricing and that "an agreement among competitors to share information regarding price and output, even through the conduit of an arbitrator, can have the effect of dampening competition, and if so can be illegal under the Sherman Act even in the absence of a direct agreement on price."

Through a statement, NOAA legal counsel in Alaska said it consulted with an outside law firm to assess the antitrust implications of the arbitration process and that, "relatively few arbitration proceedings have been initiated by harvesters since the program began, and at this time no known concerns about antitrust violations have been raised."

Another legal issue that has never been truly hashed out in the Bering Sea relates to the potential for multi-national companies to practice "**transfer pricing**" by maximizing their expenses in the United States to avoid tax liability and realize profits overseas.

For example, there is a disincentive for multi-national firms to add value to crab processed in Alaska that would be reflected as profit and reported to the IRS when a larger first wholesale price is realized.

The National Tax Center released a report by Reed College economics professor Kimberly A. Clausing in December estimating the U.S. Treasury loses out on up to \$60 billion annually from the practice of transfer pricing.

Sen. John McCain, R-Ariz., the chairman of the Commerce Committee at the time, was furious the crab program and in particular the inclusion of processor quota had bypassed his committee when fellow Republican Sen. Ted Stevens of Alaska attached the authorization to a must-pass appropriations bill.

"While the fisherman are up in arms, the processors are already counting their chickens, or in this case, crab harvests, and in turn, their profits," McCain said in a Jan. 22, 2004, statement blasting the overall size of the appropriation bill. "That is because the percent of the harvest that they will be able to process in the future is based on how much they have processed in the past under the free market environment. Regardless of future operational efficiency, supply and demand, or any other real-world factors, these processors will be guaranteed their allocation into perpetuity."

The MSA, which has guided federal fishing policy since 1976 and has been amended several times, specifically states that no antitrust exemptions are allowed in the design of quota share programs.

The council appeared to note this fact to Congress when it put forward the program in 2002, acknowledging it had proposed several "novel" proposals to address the unique geographic distribution of fishing and processing capacity around the Bering Sea fishery and its communities.

"It recognizes all components of the fishery as a balanced, inextricably linked system, rather than individual, competing components," council Chairman David Benton wrote in an Aug. 5, 2002, letter to Congress. "It may not be the appropriate model for other fisheries in the nation, or even for other fisheries in the North Pacific, and is not intended to be a template 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."

In its deliberations while adopting a catch share program for groundfish set to begin in January 2011, the Pacific Fisheries Management Council considered processor quota shares but ultimately rejected them for two reasons: "It is arguable as to whether or not processor shares are an effective or needed tool for rationalization of the fishery," according to the council report detailing the program. "The council consideration of such an option was stemmed first by a Congressional prohibition on the spending of funds for consideration of quotas for processing and then by a prohibition in the MSA."

On the advice of NOAA general counsel, the Pacific council rejected linking harvesters with processing motherships on advice such an alternative "may raise some legal issues."

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Groundswell Notes:

Hirfindahl-Hirschman Index: a measure of the size of firms in relation to the industry and an indicator of the amount of competition among them; a concentration index based on sum of the squares of the market shares. Those industries with a sum of 1,800 points or more are considered to be concentrated. Transactions that raise the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines of the U.S. Dept. of Justice and the Federal Trade Commission.

(23.2% squared = 538 points) + (10.6% squared = 112 points) + (29% squared = 841 points) + (21.6% squared = 467 points) = **1,958 points** under this post-Ratz scenario (not counting the collective power of the 6 Community Development Quota entities [CDQs] as a group of concentrated shares). This is a situation that begs for FTC and Antitrust Dept. review, and potentially for "deconcentration" efforts.

Transfer Pricing:

A 'transfer price' is the price charged by one company to a related company, whenever they allocate income and expenses among themselves. At issue in U.S. fisheries is the price that affiliated subsidiary charges for resources obtained and processed in the U.S., which were transferred as products to its overseas parent. On the other hand are expenses the foreign parent charges to the U.S. subsidiary for management services, technical know-how, equipment costs, labor or other services provided.

The latter can be falsely "loaded-in costs" which may bear no relationship to the actual factors underlying the production requirements themselves or U.S. nexus needs. Such expenses, and especially royalties, are large objects of scrutiny by tax authorities. They can create "hollow subsidiaries" in host nations that not only remove taxes but lower regional economic multiplier benefits, especially if used to bargain labor payments to lower levels.

These 'related party' intercompany transactions across borders stand in contrast to the fair measure of what two unrelated parties would have negotiated in the conduct of fair trade, "at arm's length."

The bottom line at IRS is whether or not the U.S. company properly reflects income attributable to its operations within the U.S., or whether its foreign parent is using pricing strategies to avoid higher effective U.S. taxes.

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