

APPENDIX 4

Glenn Merrill - NOAA Federal

From: Glenn Merrill - NOAA Federal
Sent: Thursday, May 25, 2017 11:22 AM
To: John Sackton
Cc: Tren Wickstrom; John Iani; Jake Jacobsen; Malcolm McLellan
Subject: Re: Non-binding Price Formula Arbitrator Issue

All,

I will cite from our regulations (I did so several times during the April Council meeting) regarding the consideration of costs (i.e., information) that may be considered by the Formula Arbitrator. Specifically, 50 CFR 680.20(g)(2) states, in relevant part....

(g) Roles and standards for the Formula Arbitrator.

* * *

(2) The contract with the Formula Arbitrator must specify that:

* * *

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to:

- (A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery; and
- (B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

- (A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;
- (B) Shall meet with IPQ holders individually;
- (C) Shall meet with distinct FCMA cooperatives individually; and
- (D) Shall meet with IFQ holders who are not members of the same FCMA cooperative individually.

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) The Formula Arbitrator may obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator.

(vii) The Formula Arbitrator shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information.

The regulations state that the contract with the Formula Arbitrator must specify that the Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator. That information could include, but is not limited to, cost information provided to the Formula Arbitrator from the QS, PQS, IPQ and IFQ holders in the fishery.

I can find no regulation that would prohibit the Formula Arbitrator from considering relevant cost information from QS, PQS, IPQ, and IFQ holders in the fishery.

Glenn

On Wed, May 24, 2017 at 5:41 PM, John Sackton <jsackton@seafood.com> wrote:

Dear Glenn

As you are aware, there is a considerable dispute between the harvester and processor arbitration organizations over whether the current crab regulations provide scope for the non-binding price formula arbitrator to examine a request from the Crab Processors to determine if the increase in the Alaska minimum wage could potentially have any impact on the non-binding price formula.

During the April Council meeting, you said: "I think just in reading the regulations that we have for the arbitration system and what may be considered in a non-binding price formula, I think it's very clear that these types of issues may be considered."

As you are aware from my previous emails, I also believe this is the case, and I am prepared this year to respond to a request to consider this issue in the following manner:

- 1) Do the regulations allow for consideration of this request?
- 2) If so, what parameters and constraints do the regulations require?
- 3) Is there, or can there be developed, sector-wide data that would allow for a proper analysis of this request?
- 4) Can the analysis isolate costs specifically attributable to the regulatory burden for one sector?
- 5) If such costs can be isolated, do they pass a threshold test of significance to the non-binding price formula, as derived from the regulations?

Is it your belief, based on your experience with the crab rationalization regulations, and your oversight of the arbitration system, that such a work plan is within the accepted scope of work of the non-binding price formula arbitrator?

I would appreciate a direct answer.

As you may know, the parties and the non-binding price formula arbitrator have an informal understanding not to change the formula within a single fisheries year because the short time between the publication of the annual formula and the opening of the season does not allow affected parties time to object or propose

reconsideration.

Accordingly, whatever the outcome of this inquiry, it would be up to the 2018 non-binding price formula arbitrator to implement any potential changes to the formula, if their analysis gives them a reason to do so.

Thank you for your attention to this matter.

best regards

John Sackton

--

John Sackton
Publisher
Seafood.com News
8 White Pine Lane
Lexington, MA 02421
Office: [781-861-1441](tel:781-861-1441)
Mobile: [617-308-0776](tel:617-308-0776)
email: jsackton@seafood.com