Joe Sullivan Law Office PLLC

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National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910
FOIA@noaa.gov

Sent via U.S. Mail and Email

Re: Freedom of Information Act Request

To whom it concerns:

We represent Inter-Cooperative Exchange (ICE), a cooperative formed under the Bering Sea/Aleutian Islands (BS/AI) crab rationalization program administered by the National Marine Fisheries Service (NMFS). ICE represents crab harvesters in ex-vessel price negotiations and arbitrations pursuant to the arbitration system established under federal regulations at 50 C.F.R. § 680.20.

ICE submits this Freedom of Information Act (FOIA) request for:

1) All correspondence to or from Glenn Merrill, Assistant Regional Administrator for the Alaska Region of NMFS, from January 1, 2016 through the present relating to (a) the interpretation and application of the arbitration system standards set forth at 50 C.F.R. § 680.20(g) and/or (b) the Alaska state minimum wage increase approved by voters in November 2014.

For purposes of this request, the term "correspondence" includes without limitation all emails, text messages, social media messages, voice mails, facsimiles and letters, regardless of whether sent from or received on government or personal devices or transmitted through some other means.

The search for responsive correspondence should include without limitation correspondence to or from: (i) employees of NMFS and the office of National Oceanic and Atmospheric Administration General Counsel (NOAA GC); (ii) North Pacific Fishery Management Council (Council) members and staff; (iii) employees and/or representatives of entities that harvest, process, market and/or sell BS/AI crab or crab products; (iv) employees and/or representatives of trade associations or business leagues that represent entities described in clause (iii), above; (v) employees and/or representatives of entities that held BS/AI crab "quota shares" (QS), "processor quota shares" (PQS), "individual fishing quota" (IFQ), "individual processing quota" (IPQ) and/or "community development quota" (CDQ) (all as defined under NMFS regulations) during the period January 1, 2016 through present; and (vi) Mr. John Sackton.

2) All documents relating to (a) the interpretation and application of the arbitration system standards set forth at 50 C.F.R. § 680.20(g) and/or (b) the Alaska state minimum wage increase approved by voters in November 2014.

For purposes of this request, the term "documents" includes without limitation all analyses, memoranda, minutes, motions, notes, papers and other records, and all drafts of the same.

ICE is submitting this request to obtain the record on which Mr. Merrill's statements and motion at the Council's April 2017 meeting and his subsequent correspondence with Mr. John Sackton are based.

At the April 2017 Council meeting, Mr. Merrill stated that the crab rationalization non-binding price formula arbitrator may consider operational costs under the existing arbitration standards, and made a motion seeking the Council's confirmation of that position. During Council deliberations on that motion, a representative of NOAA GC was asked whether anyone had requested an opinion from that office regarding the subject of Mr. Merrill's motion, and responded that the office had not been asked for such an opinion. Although Mr. Merrill's motion failed, the fact that it was introduced by the NMFS representative on the Council apparently without first obtaining a legal opinion from NOAA GC raises significant questions about the record upon which it is based.

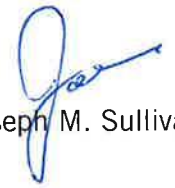
On May 25, 2017, Mr. Merrill sent an email to Mr. John Sackton, whose firm "Seafood Datasearch" has been retained as the "non-binding formula arbitrator" for the 2017-2018 crab fishing year. In that email, Mr. Merrill stated: "The regulations state that the contract with the Formula Arbitrator must specify 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." On July 14, 2017, Mr. Sackton issued a report titled "2015-2016 [sic] Golden King Crab Price [sic] non-Binding Price Formula" (the "Sackton Report"). In that report, Mr. Sackton characterizes Mr. Merrill's May 25 email as NOAA guidance concerning interpretation and application of the binding arbitration standard. See Sackton Report, pages 10-11.

In his May 25 email, Mr. Merrill states that cost information could be relevant. In context, this interpretation of the arbitration standard suggests that the non-binding price formula generated by the "Formula Arbitrator" could be adjusted in response to changes in BS/AI crab processor operational costs, such as the Alaska minimum wage increase referenced above. Mr. Merrill's position appears to be inconsistent with the staff analysis concerning this issue presented to the Council at its April 2017 meeting, and inconsistent with the Council's decision not to adopt the related motion offered by Mr. Merrill. Again, Mr. Merrill's statements raise significant questions regarding the record upon which they are based.

If the cost of responding to this request is expected to exceed $1,000, please let us know before proceeding.

Sincerely,

Joe Sullivan Law Office PLLC



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cc: Dr. James Balsiger (via email)