

SUPPORTING STATEMENT
ALASKA REGION BERING SEA and ALEUTIAN ISLANDS CRAB ARBITRATION
OMB CONTROL NO.: 0648-0516

INTRODUCTION

In January 2004, the U.S. Congress amended Section 313(j) of [Magnuson-Stevens Act](#) to mandate the Secretary of Commerce to implement the Crab Rationalization Program for the Bering Sea and Aleutian Islands Management Area (BSAI) crab fisheries. The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The North Pacific Fishery Management Council prepared, and National Marine Fisheries Service (NMFS) approved, the Fishery Management Plan (FMP) for BSAI King and Tanner Crabs. The FMP establishes criteria for the management of certain aspects of the BSAI crab fisheries by the State of Alaska Department of Fish and Game (ADF&G). The FMP is implemented by regulations at [50 CFR part 680](#).

This action is a request for renewal for this collection-of-information and addresses the binding arbitration provisions of the BSAI Crab Rationalization Program (Program). In addition, the title of the collection is changed from “Alaska Region Arbitration” to “Alaska Region Bering Sea and Aleutian Islands Crab Arbitration”.

The Crab Rationalization Program (CR Program) components include quota share allocation, processor quota share allocation, individual fishing quota (IFQ) and individual processing quota (IPQ) issuance, quota transfers, use caps*, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, arbitration system, monitoring, economic data collection, and cost recovery fee collection. Program details are found at: <http://www.alaskafisheries.noaa.gov/regs/680/default.htm>.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The CR Program: 1) addresses conservation and management issues associated with the previous “crab derby” fisheries, 2) reduces bycatch and associated discard mortality, and 3) increases the safety of crab fishermen by ending the race for fish. The Arbitration System is established by the contracts required by § 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, the negotiation approaches, the Binding Arbitration process, and fee collection.

*Use caps limit the amount of rockfish quota share and cooperative quota of primary rockfish species that may be held or used by an eligible rockfish harvester, and the amount of primary rockfish species total allowable catch that may be received by an eligible rockfish processor.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The CR Program was implemented both to maintain rigorous safeguards on use of fishing privileges for a public resource and to provide safeguards for program constituents.

The Arbitration System commences preseason when the Arbitration quota share (QS) Arbitration Organizations and the processing quota share (PQS) Arbitration Organizations nominate persons for the positions of Market Analyst, Formula Arbitrator, and Contract Arbitrators. The PQS and QS holders, who are members of their respective Arbitration Organizations, then choose, by mutual agreement, the persons for these positions.

To ensure fair price negotiations, the Arbitration System includes a provision for open negotiations among individual processing quota (IPQ) and individual fishing quota (IFQ) holders as well as various negotiation approaches, including:

- ◆ a share matching approach in which IPQ holders make known, to unaffiliated holders with uncommitted IFQ available, the amount of uncommitted IPQ they have available. This is done so the IFQ holder can match up its uncommitted IFQ by indicating intent to deliver its catch to that IPQ holder;
- ◆ a lengthy season approach that allows parties to postpone binding arbitration until sometime during the season; and
- ◆ a binding arbitration procedure to resolve price disputes between an IPQ holder and eligible IFQ holders.

The Arbitration System is designed to alleviate many of the concerns arising from the parity of supply and demand under the CR Program. If an IPQ holder or IFQ holder were unable to reach an agreement on price during open negotiations, the negotiation approaches could be used by certain participants to settle their disputes. This also encourages more efficient negotiations by preventing indefinite stalemates.

The Arbitration System is designed to accommodate the varied interests of the parties involved as well as reflect the historical negotiations between harvesters and processors. The Arbitration System identifies the general structure of the system and the general principles that guide oversight and management. It also identifies the roles and fundamental standards for: 1) the Market Analyst in developing and producing a preseason Market Report for each fishery, 2) the Formula Arbitrator in developing a single annual fleet-wide pricing formula (non-binding price formula), 3) the Contract Arbitrators in making decisions, and 4) the last best offer binding arbitration method as the arbitration procedure for participants.

The CR Program requires the Market Analyst, Formula Arbitrator and Contract Arbitrators, in developing the non-binding price formula and deciding an individual arbitration, to consider:

- ◆ current pricing;
- ◆ consumer and wholesale product prices;

- ◆ innovations and developments of the different sectors;
- ◆ efficiency and productivity of the different sectors;
- ◆ quality standards for each market;
- ◆ maintaining financially healthy and stable harvesting and processing sectors;
- ◆ safety;
- ◆ the timing and location of deliveries; and
- ◆ reasonable underages to avoid penalties for overharvesting IFQ and reasonable deadloss. (Crab must be delivered live for the live/fresh market or for processing. Dead crab deteriorates quickly and are unsuitable for human consumption. Crab that is harvested live, but subsequently die prior to delivery to the processor or for dockside sales are considered deadloss).

All catcher vessel owner (CVO) QS, Arbitration IFQ, Class A IFQ holders, catcher vessel crew (CVC) QS holders – after June 30, 2008, and PQS and IPQ holders must enter the contracts as prescribed by NMFS that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties. All contract provisions are enforced by parties to those contracts.

Any holder of uncommitted IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and uncommitted IPQ. Uncommitted IFQ holders and uncommitted IPQ holders may freely contact each other and initiate open negotiations.

a. Market Report

The Market Report provides an analysis of the market for products of a specific fishery and shall report on activities occurring within three months prior to its generation. Reported statistics shall be based only on information for which there are at least five providers reporting data. No single provider's data may represent more than 25 percent of a weighted basis of that statistic. Data must be sufficiently aggregated in the report such that it would not identify specific price information by an individual provider.

The Market Analyst will provide the Market Report not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to: 1) each Arbitration Organization in that fishery; 2) the NMFS Alaska Regional Administrator by electronic mail or mail; 3) the Formula Arbitrator, and 4) any Contract Arbitrator(s) for the fishery. The Market Report shall consider the following factors:

- Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;
- Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);
 Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);
 Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);
 The interest of maintaining financially healthy and stable harvesting and processing sectors;
 Safety and expenditures for ensuring adequate safety;
 Timing and location of deliveries; and
 The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

Market Report, Respondent	
Number of respondents	8
Total annual responses	8
Responses per respondent = 1	
Total burden hours (8 x 40)	320 hr
Hours per response = 40 hr	
Total personnel cost (\$25 x 320)	\$8,000
Total miscellaneous cost	\$48
Postage (\$6 x 8)	

Market Report, Federal Government	
Total responses	8
Total burden hours (8 x .25)	2 hr
Total personnel costs (2 x \$25)	\$50
Total miscellaneous costs	0

b. Annual Arbitration Organization report

An Arbitration Organization must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration for each crab QS fishery. The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization. The following persons are the only persons eligible to join an Arbitration Organization:

- Holders of CVO and CVC QS,
- Holders of PQS,
- Holders of Arbitration IFQ,
- Holders of Class A IFQ affiliated with a PQS or IPQ holder, and
- Holders of IPQ.

Each Arbitration Organization must submit a complete Annual Arbitration Organization Report to NMFS by email or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska, 99802

If members are QS or PQS holders, the Arbitration Organization Report must be submitted by May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

If members are IFQ or IPQ holders, the Arbitration Organization Report must be submitted no later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

Annual Arbitration Organization report

- A copy of the business license of the Arbitration Organization;
- A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;
- QS, PQS, IFQ, and IPQ ownership information on the members of the organization;
- Management organization information, including:
 - The bylaws of the Arbitration Organization;
 - A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;
- The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and
- A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

Annual Arbitration Organization report, Respondent	
Number of respondents	10
Total annual responses	10
Frequency of response = 1	
Total burden hours (10 x 4)	40 hr
Time per response = 4 hr	
Total personnel cost (\$25 x 40)	\$1,000
Total miscellaneous cost	\$60
Postage (\$6 x 10 = \$60)	

Annual Arbitration Organization report, Federal Government	
Total responses	10
Total burden hours (4 x 10)	40 hr
Total personnel costs (\$25 x 40)	\$1000
Total miscellaneous costs	0

c. Arbitration Organization Miscellaneous Reporting

The Arbitration Organization must provide to each of its members a copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates.

Arbitration Organizations must deliver to NMFS any data, information, and documents generated pursuant to § 680.20. In addition, in the case of a PQS/IPQ Arbitration Organization(s), contracts with its members must have a provision that requires the Arbitration Organization to:

- ◆ Provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, identifying the regional designations and amounts of such uncommitted IPQ, to any persons that hold uncommitted Arbitration IFQ, prohibiting the disclosure of any information received under this provision to any person except those holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ and that information is provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means;

- ◆ Arrange for the delivery to all holders of uncommitted Arbitration IFQ the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means; and
- ◆ Provide information concerning such uncommitted IPQ as necessary for the Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by a member to any person, except as directed therein.

In addition, not later than June 1 for that crab fishing year, the arbitration organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery by electronic mail or by mail addressed to the Alaska Regional Administrator. The arbitration organizations shall include a list of arbitration organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those arbitration organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

Arbitration Organization Miscellaneous Reporting, Respondent	
Number of respondents	10
Total annual responses	40
Frequency of response = 4	
Total burden hours (10 x 4)	40 hr
Time per response = 1 hr	
Total personnel cost (\$25 x 40)	\$1,000
Total miscellaneous cost	\$5,082
Postage (\$2.05 x 40 = \$82)	
Photocopy of contracts (\$100 x 50 members = \$5000))	

Arbitration Organization Miscellaneous Reporting, Federal Government	
Total responses	40
Total burden hours (1 x 40)	40 hr
Total personnel costs (\$25 x 40)	\$1,000
Total miscellaneous costs	0

d. Non-Binding Price Formula Report.

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. 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.

The Formula Arbitrator shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information. To facilitate the gathering of information, the Formula Arbitrator shall be permitted to meet with IFQ permit holders who are members of any single Fishermen’s Collective Marketing Act (FCMA), 15 U.S.C. 521)

cooperative collectively, but shall meet with IPQ permit holders individually and shall meet with distinct FCMA cooperatives individually.

The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to: 1) each Arbitration Organization in that fishery; 2) the NMFS Alaska Regional Administrator by electronic mail or mail; 3) the Market Analyst, and 4) all Contract Arbitrators in the fishery.

Non-binding Price Formula Report, Respondent	
Number of respondents	1
Total annual responses	8
Responses per respondent = 8	
Total burden hours (8 x 40)	320 hr
Hours per response = 40 hr	\$8,000
Total personnel costs (\$25 x 320)	\$4
Total miscellaneous costs (report by electronic file: 0.50 x 8)	

Non-binding Price Formula Arbitration Report, Federal Government	
Total responses	8
Total burden hours (0.25 x 8)	2 hr
Total personnel costs (2 x 25)	\$50
Total miscellaneous costs	0

e. Establish Price for Arbitration Negotiations

The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under § 680.20;

Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which those information, data, or documents apply, and the person to whom those information, data, or documents were provided.

The Contract Arbitrator must provide any information, documents, or data required under this paragraph to the NMFS Alaska Regional Administrator via electronic mail or mail no later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied.

Establish Price for arbitration negotiations, Respondent	
Number of respondents	30
Total annual responses	30
Responses per respondent = 1	
Total burden hours (22.5)	23 hr
Hours per response = 0.75 hr	
Total personnel costs (\$25 x 23)	\$575
Total miscellaneous costs (Postage \$6 x 30)	\$180

Establish Price for arbitration negotiations, Federal Government	
Total responses	30
Total burden hours (0.25 hr x 30)	8 hr
Total personnel costs (8 x \$25)	\$200
Total miscellaneous costs	0

Focused Outreach Campaign

Office of Management and Budget (OMB) stipulated that the renewal request for this and two other collections include a "focused outreach campaign" to validate burden estimates and elicit suggestions from the regulated community for reducing the burden. The information collections are: Crab Permit Applications; Crab Economic Data Reports (EDR); and Crab Arbitration. Comments were required to be submitted by November 1, 2007, through the Alaska Region's website at: <http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/pr>.

A postcard was sent to all crab permit holders announcing NMFS' request for comments and indicating the web address for entering comments. In addition, an information bulletin was posted on the NMFS Alaska Region web site soliciting response to the online questionnaire. The information bulletin No. 90 is provided in Appendix A.

The online questionnaire was posted at <http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/pr> and stated:

BSAI Crab Rationalization Program Information Collection Public Comment Period

NMFS invites the public to comment on three of the BSAI Crab Rationalization Program's information collection systems. Comments must be submitted by November 1, 2007, and will be accepted through the following forms. Please click on the form that is most applicable:

- Comment Forms on:
- Crab Permit Applications
- Crab Arbitration
- Crab Economic Data Reports

The agency is seeking comments on (a) whether the three information collection systems are necessary and whether the information has practical utility; (b) the accuracy of the agency's estimates on the burden of collecting the information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of collecting the information from respondents.

For more information, contact Patsy Bearden, NMFS Resource Management Specialist, at 907-586-7008, or email: patsy.bearden@noaa.gov.

Related Information

72 FR 50937, September 5, 2007. Notice of proposed information collection on the Alaska Region BSAI Crab Permits and Crab Economic Data Reports. Comment period through November 5, 2007.

When the public clicked on “Crab Arbitration,” they were transferred to the specific questionnaire which is provided as Appendix B.

NMFS received no public comment for this collection.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This action addresses mainly the submittal of copies to NMFS and members, which would be through the U.S. mail or delivered by courier. Where possible, copies may be submitted as an attachment to e-mail.

4. Describe efforts to identify duplication.

None of the information collected as part of this information collection duplicates other collections. This information collection is part of a specialized and technical program that is not like any other.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The collection-of-information does not impose a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The intent of this action is to develop an arbitration system. Without the collection of specified information described in this Supporting Statement, the CR Program would be jeopardized. The consequences of not collecting this information would be that NMFS could not fulfill the intent of the law created under Pub. L. No. 108-199. This law also requires that each component of the CR Program enacted by Congress must be implemented or the whole program must be withdrawn. Thus, disapproval of this data collection program would threaten all components of P.L. No. 108-199.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances exist.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A *Federal Register* notice, 72 FR 50936 published September 5, 2007, solicited public comment, and no comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift will be provided under this program.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The information collected is confidential under section 302(i) of the Magnuson-Stevens Act (16 U.S.C. 1852 et seq.) and under NOAA Administrative Order (AO) 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection does not involve information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Estimated total respondents: 49. Estimated total responses: 96. Estimated total burden: 743 hr. Estimated total personnel costs at \$25 per hour is \$18,575.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Estimated total miscellaneous costs: \$5,374.

14. Provide estimates of annualized cost to the Federal government.

Estimated total burden: 92 hr. Estimated total personnel costs: \$2,300.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

There was an adjustment: one hour was added due to correction of a previous error of rounding down instead of up. Cost in ROCIS appears to have increased due to system's previous rounding.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results of this collection-of-information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

There are no forms used in connection with this collection.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no forms used in connection with this collection.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

APPENDIX A

Information Bulletin 07-90
Sustainable Fisheries Division
907-586-7228

September 11, 2007
10:30 a.m.

NMFS Alaska Region Seeks Comments on BSAI Crab Rationalization Program Information Collections

The Alaska Region is soliciting public comments on three information collections associated with the Crab Rationalization Program (Program) according to Robert D. Mecum, Acting Administrator, Alaska Region, NMFS.

The information collections are: Crab Permits; Crab Economic Data Reports (EDR); and Crab Arbitration. Comments must be submitted by November 1, 2007, and will be accepted through the Alaska Region's website at: <http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/pr>.

The Crab Permits collection includes permit applications, transfer applications, and a form and an online site for payment of Program fees. The EDR collection includes forms and an online site requesting information on the economic impacts of the Program. The Arbitration collection is designed to accommodate the varied interests of the parties involved as well as reflect the historical negotiations between harvesters and processors.

The Region is seeking comments on:

- ◆ whether the information collections are necessary and whether the information has practical utility;
- ◆ the accuracy of the agency's estimates on the burden of collecting the information;
- ◆ ways to enhance the quality, utility, and clarity of the information collected; and
- ◆ ways to minimize the burden of collecting the information from respondents.

For more information, contact Patsy A. Bearden at 907-586-7008, or email patsy.bearden@noaa.gov.

APPENDIX B

Crab Arbitration Comment Form

Please let us know:

- whether the Crab Arbitration information collection system is necessary and whether the information has practical utility
- the accuracy of the agency's estimates on the burden of collecting the information
- ways to enhance the quality, utility, and clarity of the information collected
- ways to minimize the burden of collecting the information from respondents

Call Patsy Bearden if you have any questions: (907) 586-7008. Thank you.

Contact Information

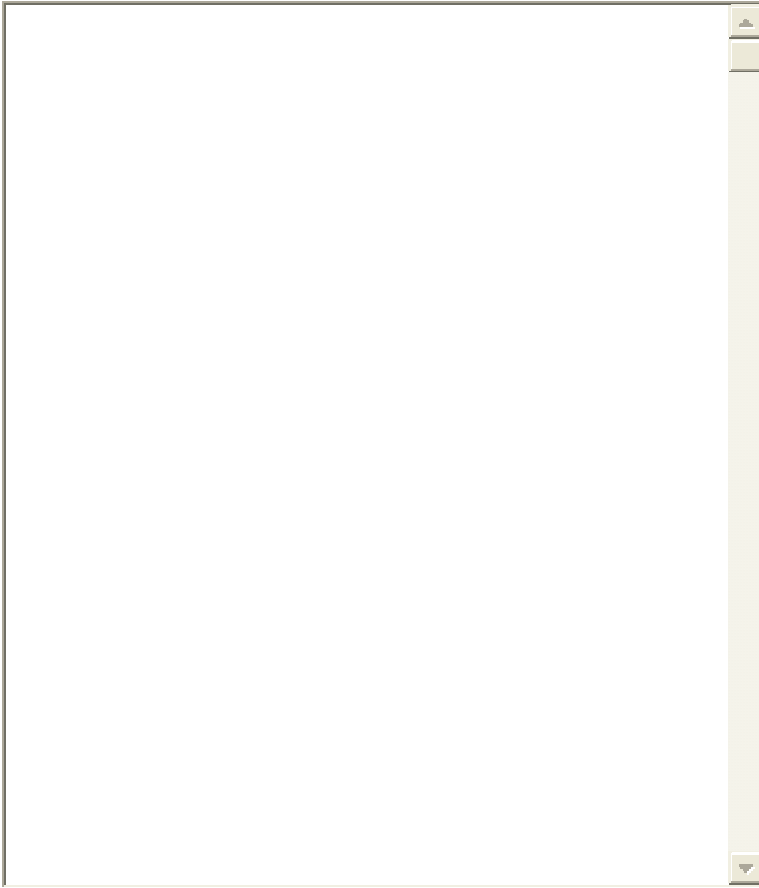
Name (**required**)

Email Address (optional)

Phone (optional)

1. Are any elements of the binding arbitration process not working? If so, please explain why not?

2. Please provide any additional comments you have on any aspect of the crab arbitration process.



Please enter the numbers displayed below to help us reduce auto-generated spam.

5 4 2 6

Click once to send form.

NOTE: There may be a few second delay and then you will be sent back to the BSAI Crab Rationalization web page.

OMB Control No.: 0648-0516
Expiration Date: 02/29/2008
