

Orca Bay can appeal the IAD because it directly and adversely affects Orca Bay.⁵ I have not joined UniSea as a party to this appeal because UniSea's interests will not be directly and adversely affected by the outcome of this appeal.

Orca Bay did not request a hearing and I have not ordered one because the record contains sufficient information to decide this appeal.⁶ I therefore close the record and issue this decision.

The Appendix to this Decision lists the documents submitted by Orca Bay.⁷ I will refer to the documents using Orca Bay's exhibit designation.

SUMMARY

Orca Bay has shown, by a preponderance of the evidence, that it should receive PQS based on the 146,778 pounds of golden king crab that were recorded on ADFG fish tickets C95 017429 and C95 017515. Orca Bay has met the requirement of 50 C.F.R. § 680.40(d)(4)(iv) and has shown that it was the buyer of this crab, even though it was not the receiver of the crab listed on the fish tickets.

ISSUE

Should Orca Bay receive Processing Quota Share for the 146,778 pounds of golden king crab recorded on ADFG fish tickets C95 017429 and C95 017515 as "the buyer" of that crab within the meaning of the documentation provision at 50 C.F.R. § 680.40(d)(4)(iv)?

ANALYSIS

The pounds at issue in this appeal are two landings of golden king crab totaling 146,778 pounds: 64,661 pounds landed on October 15, 1999, recorded on fish ticket C95 017429; and 82,177 pounds landed on October 30, 1999, recorded on fish ticket C95 017515. Golden king crab is sometimes called brown king crab. The crab was listed on these fish tickets as brown king crab. I refer to this crab as golden king crab because that is the term in the CRP rule.

First, I will state the facts, as I find them, with respect to the deliveries of crab on fish tickets C95 017429 and C95 017515. Second, I will analyze whether, based on those facts, Orca Bay

⁵ 50 C.F.R. § 679.43(b). The CRP regulation incorporates the appeal regulations in 50 C.F.R. § 679.43. 50 C.F.R. § 680.43.

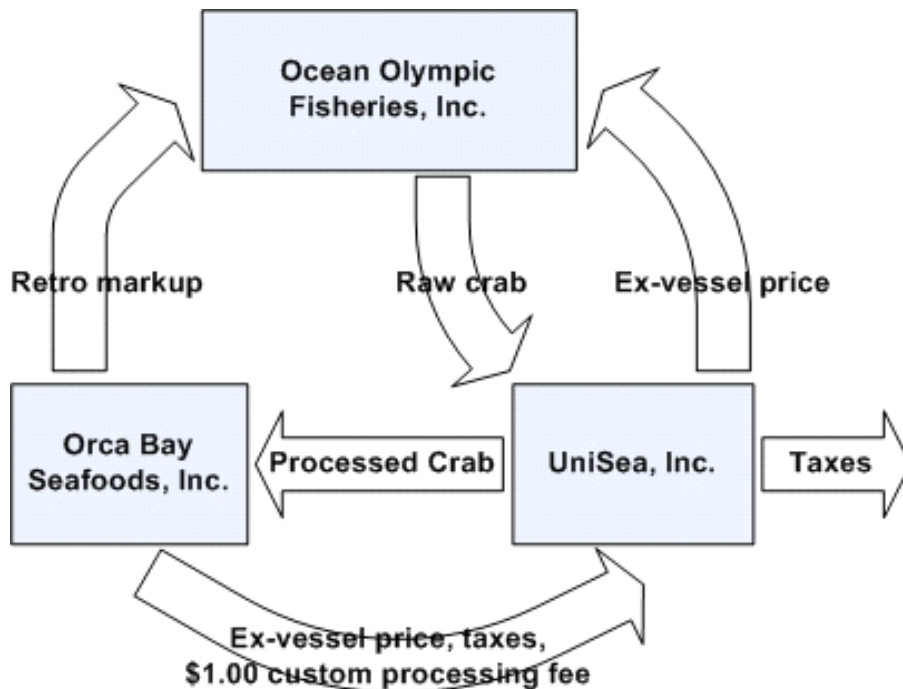
⁶ 50 C.F.R. § 679.43(g)(2).

⁷ With its initial appeal, Orca Bay submitted Exhibits A-1 to A-6; Exhibits B - 1 to B - 5; Exhibit C; Exhibit D. With its supplemental argument, Orca Bay submitted Exhibits I, Exhibits II A - D; Exhibits III A - III C; Exhibits IV A - IV D. Letter to Office of Administrative Appeals (Jan. 18, 2007); Letter to Office of Administrative Appeals (Aug. 31, 2007).

should receive PQS for the 146,778 pounds of golden king crab recorded on those fish tickets as “the buyer” of the crab within the meaning of the documentation provision at 50 C.F.R. § 680.40(d)(4)(iv).

I. Facts with respect to the two shipments of crab

Orca Bay submitted a diagram which I find, with two additions noted below, accurately describes the relationships and exchanges between Orca Bay, Ocean Olympic Fisheries, Inc. [Ocean Olympic] and UniSea:



The first addition is that the diagram does not mention Robert Carlton. Mr. Carlton was the State of Alaska permit holder who signed fish tickets C95 017429 and C95 017515 attesting that the crab was caught from the F/V OCEAN OLYMPIC. [Exhibit A-1, Exhibit B-1] The F/V OCEAN OLYMPIC was owned by Ocean Olympic Fisheries, Inc., [Ocean Olympic] from 1991 to 2001.⁸ Mr. Carlton was a principal and shareholder in Ocean Olympic, or its predecessor corporation, from 1991 until January 31, 2007. [Exhibit IV-D] I find that Mr. Carlton was acting through, and on behalf of, Ocean Olympic in all matters relevant to the harvest and delivery of these two shipments of crab. I conclude that, for purposes of this appeal, Mr. Carlton and Ocean Olympic should be treated as the same entity.

⁸ Exhibit IV-C. Adanac Fisheries, Inc., owned the vessel from 1991 to 1996, when Adanac Fisheries changed its corporate name to Ocean Olympic Fisheries, Inc. [Exhibit IV-B]

The second addition is that, with respect to the second shipment, Orca Bay submitted evidence that it had a direct relationship with Ocean Olympic, before Orca Bay delivered that crab to UniSea. Orca Bay submitted a pre-delivery purchase order, dated October 27, 1999, showing that Orca Bay bought that shipment of crab from Ocean Olympic before Ocean Olympic delivered it to UniSea's plant on October 30, 1999. [Exhibit I] The diagram does not reflect that connection between Ocean Olympic and Orca Bay.

Facts specific to first shipment: 64,661 pounds of golden king crab on October 15, 1999

With respect to the first shipment of crab on October 15, 1999, I find the following facts. Robert Carlton caught and retained 64,661 pounds of golden king crab from the F/V OCEAN OLYMPIC on October 15, 1999. [Exhibit A-1] Acting on behalf of OOFI, Robert Carlton sold this crab to UniSea for \$219,847.40 or an ex-vessel price of \$3.40 a pound. [Exhibit A-1] UniSea filed a Commercial Annual Operator's Report [COAR] with the State of Alaska in 1999 and listed these shipments as crab it processed.⁹ UniSea paid the State of Alaska a 3% processing tax (\$6,595.42) and a 0.3% marketing tax (\$659.54) for this crab. [Exhibit A-2] UniSea turned the raw product into cases of cooked clusters of golden king crab and shipped it to Orca Bay. [Exhibit A-4]

UniSea billed all these charges to Orca Bay in two invoices. The first invoice totaled \$227,102.36: the ex-vessel price of the crab plus the 3% processing tax and the 0.3% marketing tax. [Exhibit A-2] Orca Bay paid these charges. [Exhibit A-3] The second invoice was for \$39,424.00, which represented \$1.00 per pound for 39,424 finished pounds (1.408 cases) of cooked clusters of golden king crab. The invoice specifically states it is "to bill you [Orca Bay] for custom processing" of this crab. [Exhibit A-4] Orca Bay paid this bill. [Exhibit A-5]

Ocean Olympic then billed Orca Bay directly for a final retro markup for this crab. The amount was \$16,165.25 (\$0.25 per pound for 64,661 pounds). [Exhibit A-6] Orca Bay directly paid Ocean Olympic this charge. [Exhibit A-7].

With respect to this first delivery of crab, I find that Orca Bay paid *all* of the costs of purchasing and processing this shipment of crab through its payments to UniSea and Ocean Olympic.

Facts specific to second shipment: 82,177 pounds of golden king crab on October 30, 1999

⁹ The record does not have UniSea's COAR but has memoranda from ADFG staff who examined it. Memorandum (e-mail) from Eric Reiter, ADFG, to Jessica Gharrett, RAM (July 19, 2005); Memorandum(e-mail) from Michael Plotnick, ADFG, to Tracy Buck, RAM (July 5, 2005). The ADFG/RAM e-mail correspondence on this subject is Exhibit 1 to *Order Providing Documents to Appellant and Scheduling Further Argument* (April 23, 2007). ADFG staff stated that UniSea filed a COAR in 1999 that did not list Orca Bay as an entity for which UniSea did custom production.

With respect to the second shipment of crab on October 30, 1999, the pattern was virtually identical. I find the following facts.

Robert Carlton caught and retained 82,177 pounds of golden king crab from the F/V OCEAN OLYMPIC on October 30, 1999. [Exhibit B-1] Acting on behalf of Ocean Olympic, Robert Carlton sold this crab to UniSea for \$279,197.80, or an ex-vessel price of \$3.40 a pound. [Exhibit B-1] UniSea filed the COAR with the State of Alaska and listed this as crab it processed.¹⁰ UniSea paid the State of Alaska the 3% processing tax (\$8,375.93) and the 0.3% marketing tax (\$837.59) due on this delivery. [Exhibit B-2] UniSea turned the raw product into cases of cooked clusters of golden king crab and shipped it to Orca Bay. [Exhibit II-D]

UniSea passed all these charges along to Orca Bay in two invoices. The first invoice was for a total of \$288,411.32: the ex-vessel price of the crab plus the 3% processing tax and the 0.3% marketing tax. [Exhibit B-2] Orca Bay paid these charges. [Exhibit B-3] The second invoice was for \$49,364.00, which represented \$1.00 per pound for 49,364 finished pounds (1,763 cases) of cooked clusters of golden king crab. The invoice states it is “to bill you [Orca Bay] for 1,763 cases loaded on the Sally I” on November 2, 1999. [Exhibit B-4]

Ocean Olympic billed Orca Bay directly for a final retro markup for this crab on November 2, 1999. The amount was \$24,635.10 (\$0.30 per pound for 82,117 pounds). [Exhibit B-5]. Orca Bay paid OOFI directly this charge. [Exhibit B-6]

The documentation for the second shipment is essentially the same as for the first shipment, except, as I have noted, Orca Bay produced an additional document for the second shipment. On October 27, 1999, *before* Ocean Olympic actually landed and delivered this boatload of crab, Orca Bay executed a purchase order to Ocean Olympic for the approximate amount of this shipment of crab (70,000 pounds). The purchase order directed Ocean Olympic to deliver this crab to Orca Bay “c/o UniSea” for processing by UniSea at Dutch Harbor. This shows that Orca Bay arranged for the processing of this crab by UniSea before Ocean Olympic landed this crab on October 30, 1999. [Exhibit I]

With respect to the delivery of crab on October 30, 1999, I find that Orca Bay paid *all* of the costs of purchasing and processing this crab through its payments to UniSea and Ocean Olympic. And I find that Orca Bay arranged for the purchase and processing of this delivery of crab on October 27, 1999.

II. Should Orca Bay be treated as “the buyer” of these two deliveries of crab within the meaning of 50 C.F.R. § 680.40(d)(iv)?

¹⁰ See note 9 *supra*.

A. The CRP Program and the documentation provision in 50 C.F.R. § 680.40(d)(iv).

The CRP covers eight crab fisheries in BSAI: Bristol Bay red king crab; Bering Sea snow crab; Bering Sea Tanner crab; Eastern Aleutian Island golden king crab; Pribilof Islands red and blue king crab; St. Matthew blue king crab; Western Aleutian Island red king crab; and Western Island golden king crab.¹¹ NMFS initially assigns PQS for each of these fisheries based on its assessment of who legally processed crab, and in what quantities, in the qualifying years.¹² The qualifying years for the Western Aleutian golden king crab fishery are 1996 through 2000.¹³

To make initial assignments of PQS, NMFS constructs an official crab rationalization record. The official crab rationalization record is “the information prepared by the [NMFS] Regional Administrator about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.”¹⁴ An applicant may submit claims that are inconsistent with the official crab rationalization record, but the applicant has the burden of proving that the submitted claims, and not the official record, are correct.¹⁵ The applicant has the burden of proving that the submitted claims are correct by a preponderance of evidence, which means that the applicant must prove that it is more likely than not that its claims are true.¹⁶

The official crab rationalization record does not show that Orca Bay legally processed any crab in the qualifying years.¹⁷ Orca Bay claims that the official record is incorrect because it does not show Orca Bay as the buyer of the 146,778 pounds of golden king crab recorded on ADFG fish tickets C95 017429 and C95 017515.

¹¹ 50 C.F.R. § 680.2 (definition of Crab Rationalization fisheries); Table 1 to Part 680.

¹² 50 C.F.R. § 680.40(d). The applicant must be a “qualified person.” The definition of “qualified person” relevant to this appeal is a U.S. corporation that legally processed crab QS species in 1998 or 1999. 50 C.F.R. § 680.40(d)(3)(i).

¹³ 50 C.F.R. § 680.40(d). To be more precise, the qualifying years are the portions of those years when the Western Aleutian golden king crab fishery was open, as listed in Table 9 to Part 680.

¹⁴ 680.2 (definition of official crab rationalization record).

¹⁵ 50 C.F.R. § 680.40(f)(4).

¹⁶ This is the usual standard in a civil matter and contrasts with proving a fact beyond a reasonable doubt, which is the standard of proof in a criminal proceeding.

¹⁷ IAD (Oct. 17, 2006).

These fish tickets list UniSea as the receiver, and UniSea would therefore normally be the buyer as well. But the CRP regulation has an exception to the rule that the receiver listed on the fish ticket is the buyer for purposes of receiving the PQS from the crab listed on the fish ticket. This exception is in a provision entitled, “Documentation,” at 50 C.F.R. § 680.40(d)(4)(iv):

Documentation. Evidence of legal processing shall be limited to State of Alaska fish tickets, *except that*:

(A) NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or evidence of direct payment from a receiver of crab to a harvester *if that information indicates that the buyer of crab differs from the receiver indicated on State of Alaska fish tickets*; . . .¹⁸

The documentation provision implements Option 4 in Paragraph 2.3 of Amendment 18 to the Fishery Management Plan for BSAI King and Tanner Crabs:

Option 4. If the buyer can be determined, by NMFS using the State of Alaska Commercial Operators Annual Report, fish tax records, or evidence of direct payment to fishermen, to be an entity other than the entity on the fish ticket, then the IPQ shall be issued to that buyer.¹⁹

Therefore, I must examine whether Orca Bay has submitted information that shows, by a preponderance of evidence, that Orca Bay is the buyer of that crab even though UniSea is listed as the receiver on the fish tickets within the meaning of the documentation provision.

I examine this question in the context of the purpose of the documentation provision. The purpose of this provision is “to address the custom processing arrangements.”²⁰ NMFS explained:

[T]he Council recognized that *custom processing*, in which one firm paid another to process crab at a specific facility, or allowed the lease of its facility, did occur and permitted those crab buyers to claim legal processing history and the rights to apply for PQS in cases where documentation indicated that the legal processing

¹⁸ 50 C.F.R. § 680.40(d)(4)(iv)(emphasis added).

¹⁹ The full text of Amendment 18 is on the NMFS Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries/amds/KTCAMd18.pdf> <<visited June 20, 2007>>.

²⁰ Proposed Rule, 69 Fed. Reg. 63,200, 63,214 (Oct. 29, 2004)(emphasis added). The final rule only addressed substantive differences between the final and proposed rule and referred the public back to the proposed rule for additional information. Final Rule, 70 Fed. Reg. 10174, 10174 (March 2, 2005).

that occurred at a facility was conducted by someone other than the buyer of the crab at the time.²¹

The regulations define custom processing as “processing of crab undertaken on behalf of another person.”²²

B. Application of the documentation provision.

To repeat the language of the documentation provision at 50 C.F.R. § 680.40(d)(iv):

Documentation. Evidence of legal processing shall be limited to State of Alaska fish tickets, *except that*:

(A) NMFS may use information from [1] a State of Alaska Commercial Operators Annual Report, [2] State of Alaska fishery tax records, or [3] evidence of direct payment from **a receiver of crab to a harvester** if that information indicates that **the buyer of crab** differs from **the receiver indicated on State of Alaska fish tickets**; . . . [brackets added; emphasis added]

In addition to fish tickets, this regulation allows NMFS to use three additional sources of information: [1] State of Alaska Commercial Operator’s Annual Report or COAR, [2] State of Alaska fishery tax records, or [3] evidence of direct payment from a receiver of crab to a harvester if that information indicates that the buyer of crab differs from the receiver indicated on State of Alaska fish tickets”²³ I’ll examine each in turn.

UniSea filed the COAR for these two shipments of crab. UniSea listed these two shipments of crab as crab it bought and processed. UniSea did not list this as crab that it custom processed for Orca Bay.²⁴ The COAR, standing alone, does not support Orca Bay’s position that it should be treated as the buyer of this crab. But the fact that Orca Bay reimbursed UniSea for the ex-vessel price it paid to the harvester supports Orca Bay’s claim to be the real buyer of this crab, as I discuss below.

UniSea initially paid the State of Alaska fishery taxes owing on these two shipments: the 3% processing tax and the 0.3% marketing tax. The tax records, standing alone, would not support

²¹ Proposed Rule, 69 Fed. Reg. 63,200, 63,213 (Oct. 29, 2004).

²² Final rule, 70 Fed. Reg. 10,174, 10,278 (March 2, 2005), *adopting* definition in 50 C.F.R. § 680.2. The proposed rule had the same definition. Proposed rule, 69 Fed. Reg. 63,200, 63,262 (Oct. 29, 2004).

²³ 50 C.F.R. § 680.40(d)(4)(iv)(brackets added, emphasis added).

²⁴ *See* note 9 *supra*.

Orca Bay's claim that it should be treated as the buyer of this crab. But the fact that Orca Bay reimbursed UniSea for these taxes supports Orca Bay's claim to be the real buyer of this crab, which I discuss below.

The third category is "evidence of direct payment from **a receiver of crab** to **a harvester** if that information indicates that **the buyer of crab** differs from **the receiver indicated on State of Alaska fish tickets.**" The question is whether Orca Bay should be treated as "the buyer" of this crab even though UniSea is the receiver of this crab listed on the State of Alaska fish tickets." [Exhibit A-1, Exhibit B-1]²⁵ I will analyze the terms of the regulation and I will analyze whether the transaction was one of custom processing.

1. Terms of the regulation.

The regulation directs NMFS to examine evidence of direct payment from "a receiver of crab" to "a harvester." In this transaction, who is "a harvester" of this crab? The "harvester" is the person or entity that caught and retained the crab.²⁶ Robert Carlton caught and retained the crab and is a harvester of this crab. Since I have found that Robert Carlton and Ocean Olympic should be treated as the same entity for purposes of this appeal, Ocean Olympic is also a harvester of this crab. A payment to Ocean Olympic is therefore a payment to "a harvester" of this crab.²⁷

In this transaction, who is "a receiver of crab" within the meaning of the documentation provision? I conclude UniSea is "a receiver" of this crab. It was the initial receiver and is listed on the fish tickets.

I also conclude that Orca Bay is "a receiver" of this crab within the meaning of 50 C.F.R. § 680.40(d)(4)(iv). I conclude this for several reasons. First, the use of the term "a receiver of crab" is different from the term, "the receiver listed on State of Alaska fish tickets." The term "a receiver" is compatible with there being more than one receiver. The term "the receiver" implies only one. Second, in this situation, there is more than one receiver. UniSea was the first receiver and Orca Bay was the second receiver. Most important, if NMFS could only consider evidence from UniSea, that would exclude evidence of direct payment by Orca Bay. To take a hypothetical, what if the only evidence in this record were direct payments from Orca Bay to the harvester? What if there was no evidence of any direct payments from UniSea to the harvester? Would Orca Bay lose because the only evidence was payments it had made?

²⁵ Niki Baird signed as receiver and representative of UniSea.

²⁶ 50 C.F.R. § 680.2: "Harvesting or to harvest means the catching and retaining of any fish."

²⁷ This appeal does not present any conflict between the individual harvester of the crab and the corporate harvester.

I know the record here is more mixed than my hypothetical. The record has evidence of payments from Orca Bay *and* UniSea to the harvester, but the point is still the same. I have no reason to believe that the purpose of this regulation is served by *excluding* evidence of payments by Orca Bay, when the issue before me is whether Orca Bay should be considered the buyer of this crab. Such a result would exclude directly relevant evidence and would be incompatible with the appeal regulations, which state that “[a]ll evidence that is relevant, material, reliable, and probative may be included in the record.”²⁸

I conclude that the purpose of the documentation provision is served by *including* evidence in the record of payments by the entity who is the second and ultimate receiver of the crab and who is claiming to be the real buyer. I conclude that Orca Bay is “a receiver” of this crab within the meaning of 50 C.F.R. § 680.40(d)(4)(iv).

I now turn to whether Orca Bay should be treated as “the buyer” of this crab within the meaning of 50 C.F.R. § 680.40(d)(iv). I conclude that Orca Bay should be treated as “the buyer” of this crab within the meaning of the 50 C.F.R. § 680.40(d)(iv). I base this conclusion on the following payments: [1] payments by UniSea, a receiver, to Ocean Olympic, the harvester, and Orca Bay’s reimbursement to UniSea of these payments; [2] payments by UniSea, a receiver, to the State of Alaska for fishery taxes, and Orca Bay’s reimbursement to UniSea of these taxes; and [3] direct payments by Orca Bay, a receiver, to Ocean Olympic, the harvester, for the final retro markup for these two shipments of crab. Collectively, these payments show that Orca Bay was the final receiver of these two shipments of crab and paid *all* of the costs to purchase and process both shipments: the ex-vessel price of the crab, the processing tax, the marketing tax and the final retro mark-up.

2. Whether the transactions were for custom processing.

According to 50 C.F.R. § 680.2, custom processing means “processing of crab undertaken on behalf of another person.”²⁹ I conclude that the arrangement between Orca Bay and UniSea for these two shipments of crab was that UniSea undertook processing of this crab on behalf of UniSea within the meaning of 50 C.F.R. § 680.2 and the arrangement for both shipments was for custom processing. I rely on four facts in reaching this conclusion.

First, UniSea explicitly labeled the first shipment as a custom processing arrangement. UniSea’s invoice for the processing fee states that it is “to bill you [Orca Bay] for custom processing.” [Exhibit A-4]

Second, although the invoice for the second shipment did not use the words “custom processing,” the parties treated the second shipment exactly the same as the first. Orca Bay

²⁸ 50 C.F.R. § 679.43(j).

²⁹ 50 C.F.R. § 680.2.

bought the vessel's entire shipment and arranged for UniSea to process it into cooked clusters. [Exhibit B-4]. UniSea promptly shipped both shipments to Orca Bay. And Orca Bay paid all the costs of harvesting and processing this shipment.

Third, Orca Bay purchased the second shipload of crab on October 27, 1999, *before* Ocean Olympic actually delivered the crab on October 30, 1999. [Exhibit I] This supports Orca Bay's contention that Orca Bay had a direct relationship with the harvester and that UniSea, and UniSea's processing facility at Dutch Harbor, were a conduit for that relationship.

Fourth, as noted, Orca Bay paid all of UniSea's costs of purchasing and processing both shipments of crab.

Since UniSea's interests are not affected by this appeal, I did not join UniSea as a party. This means that UniSea was not present to challenge Orca Bay's evidence and interpretation of events.³⁰ The outcome might have been different if UniSea or RAM had challenged Orca Bay's claim to PQS. Although I have examined Orca Bay's arguments and evidence carefully, I did not assume an adversarial role with respect to Orca Bay's claim to the extent that a competing applicant, such as UniSea, might have done.

Therefore, based on the arguments and evidence before me, I conclude that Orca Bay should receive Processing Quota Share for the 146,778 pounds of golden king crab recorded on ADFG fish tickets C95 017429 and C95 017515 as "the buyer" of that crab within the meaning of the documentation provision at 50 C.F.R. § 680.40(d)(4)(iv).

FINDINGS OF FACT

Orca Bay has shown, by a preponderance of evidence, the following facts:

1. Robert Carlton is the State of Alaska permit holder who submitted ADFG fish ticket C95 017429 that showed 64,661 pounds of golden king crab delivered on October 15, 1999 from the F/V OCEAN OLYMPIC.
2. Robert Carlton is the State of Alaska permit holder who submitted ADFG fish ticket C95 017515 that showed 82,177 pounds of golden king crab delivered on October 30, 1999 from the F/V OCEAN OLYMPIC.
3. Ocean Olympic Fisheries, Inc., or its predecessor corporation, Adanac Fisheries, Inc., owned the F/V OCEAN OLYMPIC from 1991 to 2001.

³⁰ RAM did not wish to submit anything contesting the arguments and evidence Orca Bay submitted on appeal. Memorandum (e-mail) from Tracy Buck, Acting RAM Program Administrator, to Mary Alice McKeen (June 25, 2007).

4. Robert Carlton was a principal and shareholder in Ocean Olympic, or its predecessor corporation Adanac Fisheries, from 1991 to 2007.
5. Mr. Carlton was acting through, and on behalf of, Ocean Olympic in all matters relevant to the harvest and delivery of these two shipments of crab.
6. UniSea paid Ocean Olympic the ex-vessel price of these two shipments of crab.
7. UniSea paid the State of Alaska the processing tax and marketing tax for these two shipments of crab.
8. UniSea processed these two shipments of raw crab by turning them into cases of cooked clusters and shipping them immediately to Orca Bay.
9. For these two shipments of crab, Orca Bay reimbursed UniSea the ex-vessel price paid to Ocean Olympic and the taxes paid to the State of Alaska.
10. For these two shipments of crab, Orca Bay paid UniSea a processing fee of \$1.00 per pound.
11. For these two shipments of crab, Orca Bay paid Ocean Olympic directly the final retro markup.
12. For these two shipments of crab, Orca Bay paid all the costs in purchasing and processing them.
13. For the second delivery of crab, recorded on ADFG fish tickets C95 017515, Orca Bay purchased that shipment before it was delivered.

CONCLUSIONS OF LAW

1. Robert Carlton is “a harvester” of the crab recorded on ADFG fish tickets C95 017429 and C95 017515 within the meaning of 50 C.F.R. §680.40(d)(4)(iv).
2. Ocean Olympic Fisheries, Inc., is “a harvester” of the crab recorded on ADFG fish tickets C95 017429 and C95 017515 within the meaning of 50 C.F.R. §680.40(d)(4)(iv).
3. For purposes of this appeal, Robert Carlton and Ocean Olympic Fisheries, Inc., should be treated as the same entity.
4. UniSea is “a receiver” of the crab recorded on ADFG fish tickets C95 017429 and C95 017515 within the meaning of 50 C.F.R. §680.40(d)(4)(iv).

5. Orca Bay Seafoods is “a receiver” of the crab recorded on ADFG fish tickets C95 017429 and C95 017515 within the meaning of 50 C.F.R. §680.40(d)(4)(iv).
6. Orca Bay Seafoods is “the buyer” of the crab recorded on ADFG fish tickets C95 017429 and C95 017515 within the meaning of 50 C.F.R. § 680.40(d)(4)(iv).
7. Orca Bay Seafoods and UniSea had a “custom processing” arrangement for the crab recorded on ADFG fish tickets C95 017429 and C95 017515 within the meaning of 50 C.F.R. § 680.2.
8. Orca Bay has shown, with respect to the crab recorded on ADFG fish tickets C95 017429 and C95 017515, that “the buyer of this crab differ[ed] from the receiver indicated on State of Alaska fish tickets,” within the meaning of 50 C.F.R. § 680.40(d)(4)(iv).
9. Orca Bay should receive Processing Quota Share for the 146,778 pounds of golden brown king crab recorded on ADFG fish tickets C95 017429 and C95 017515 as “the buyer” of this crab within the meaning of the documentation provision, 50 C.F.R. § 680.40(d)(4)(iv).

DISPOSITION

The IAD that is the subject of this appeal is VACATED. This Decision takes effect November 23, 2007, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. § 679.43(o).

Orca Bay Seafoods, Inc., or RAM may submit a motion for reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska time, on the tenth day after this Decision, November 5, 2007. A motion for reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Administrative Judge, and must be accompanied by a written statement in support of the motion.

Mary Alice McKeen
Administrative Judge

APPENDIX TO ORCA BAY DECISION, LIST OF EXHIBITS

EXHIBITS A-1 to A-7: DELIVERY OF 64,661 POUNDS ON OCTOBER 15, 1999

Exhibit A-1: Alaska Department of Fish and Game Crab shellfish ticket C95 017429, dated October 15, 1999, showing delivery by the F/V OCEAN OLYMPIC to UniSea of 64,661 pounds of golden king crab for an ex-vessel price of \$219,847.40 (\$3.40 per pound).

Exhibit A-2: Invoice #804339 from UniSea to Orca Bay dated October 20, 1999, for \$227,102.36, with notation that this “to bill you for raw product fish ticket #C9501742 [sic], 64,661 lbs @ \$3.40.” The invoice includes \$219,847.40 for the ex-vessel price for the raw crab plus a 3% processing tax (\$6,595.42) and a 0.3% marketing tax (\$659.54).

Exhibit A-3: Check #51392 from Orca Bay to UniSea for \$324,529.51. Check stub states the check constitutes payment for three UniSea invoices, including Invoice #804339 [Exhibit A- 2].

Exhibit A-4: Invoice #804338 from UniSea to Orca Bay dated October 20, 1999, for \$39,424.00, with notation that this is “to bill you for custom processing” for \$1.00 per pound for 39,424 finished pounds (1,408 cases) of cooked clusters of golden king crab.

Exhibit A-5: Check #51703 from Orca Bay to UniSea for \$41,214.91 in payment of three described invoices from UniSea, including Invoice #804338 [Exhibit A-4].

Exhibit A-6: Final Commercial Invoice OOF-OB-9908 dated October 20, 1999 , for the retro markup of \$16,165.25 (\$0.25 per pound) from Ocean Olympic Fisheries, Inc., [Ocean Olympic] to Orca Bay for the 64,661 pounds of golden king crab.

Exhibit A-7: Wiring confirmation from U.S. Bank, evidencing payment of \$16,165.25 from Orca Bay to Ocean Olympic for Invoice OOF-OB-9908 [Exhibit A-6].

EXHIBITS B-1 to B-7: DELIVERY OF 82,117 POUNDS ON OCTOBER 30, 1999

Exhibit B-1: Alaska Department of Fish and Game Crab Shellfish Ticket C95 017515, dated October 30, 1999, showing delivery by the OCEAN OLYMPIC to UniSea of 82,177 pounds of golden king crab for an ex-vessel price of \$279,197.80 (\$3.40 per pound).

Exhibit B-2: Invoice #804477 from UniSea to Orca Bay dated November 3, 1999, for \$288,411.32, with notation that this is “to bill you for raw product fish ticket #C95017515, 82,117 lbs @ \$3.40.” The invoice includes \$279,197.80 for the ex-vessel price for the raw crab plus a 3% processing tax (\$8,375.93) and a 0.3% marketing tax (\$837.59).

Exhibit B-3: Check #52096 from Orca Bay to UniSea for \$371,133.04. Check stub states the check constitutes payment for four UniSea invoices, including Invoice #804477 [Exhibit B-2].

Exhibit B-3: Check #52096 from Orca Bay to UniSea for \$371,133.04 . Check stub states the check constitutes payment for four UniSea invoices, including Invoice #804473 [Exhibit B-4].

Exhibit B-4: Invoice #804473 from UniSea to Orca Bay dated November 2, 1999, for \$49,364.00, for cooked clusters of crab with the notation that this is “to bill you for 1,763 cases loaded on the Sally I Voyage 135 loaded on 11/02/99” at \$1.00 per pound for 49,364 finished pounds.

Exhibit B-5: Final Commercial Invoice OOF-OB-9909 dated November 2, 1999 , for the retro of \$24,635.10 (\$0.30 per pound) from Ocean Olympic to Orca Bay for 82,117 pounds of golden king crab.

Exhibit B-6: Wiring confirmation from U.S. Bank evidencing payment of \$24,635.10 from Orca Bay to Ocean Olympic for Invoice OOF-OB-9909 [Exhibit B-5].

EXHIBIT I: PRIOR AGREEMENT WITH RESPECT TO SECOND CRAB DELIVERY

Exhibit I: Purchase Order 24215 dated October 27, 1999, from Orca Bay to Ocean Olympic, relating to the second crab delivery (82,117 lbs.) from Ocean Olympic to UniSea. The purchase order instructs Ocean Olympic to ship the crab to Orca Bay “c/o UniSea” “for processing.” In exchange for processing, UniSea was to be paid \$1.00 per pound of finished product.

EXHIBITS II A to II D: FURTHER EVIDENCE OF CUSTOM PROCESSING ARRANGEMENT

Exhibit II-A: Purchase Order No. 23761 dated October 19, 1999, relates to the initial delivery ON October 15, 1999. It refers to the “custom processing” arrangement and describes the price as \$1.00 per pound of finished product.

Exhibit II-B: Western Pioneer Shipping Manifest, relating to first delivery on October 19, 1999.

Exhibit II-C: Purchase Order No. 23777 dated November 2, 1999, relating to second delivery on October 30, 1999. It refers to the “labor/packing processing” of the crab and describes the price as \$1.00 per pound of finished product.

Exhibit II-D: Western Pioneer Shipping Manifest, relating to second delivery on October 30, 1999.

EXHIBIT III A to III C: PAYMENTS TO CRAB HARVESTER

Exhibit III-A: Consolidated Settlement Sheet for the vessel F/V OCEAN OLYMPIC, Official Number 592441 for receipt by Ocean Olympic from UniSea of (i) \$215,450.45, which represents

the ex-vessel price for the first crab delivery of \$219,847.40 minus \$4,396.95 in advance costs from UniSea, and (ii) \$265,266.21, which represents the ex-vessel price for the second crab delivery of \$279,197.80 minus a total of \$13,931.59 in advances from UniSea.

Exhibit III-B: Ocean Olympic's Viking Community Bank checking account statement for October 1999 showing receipt of \$215,450.45.

Exhibit III -C: Ocean Olympic's Viking Community Bank checking account statement for November 1999, showing receipt of \$265,266.21.

EXHIBITS IV-A to IV-D: RELATIONSHIP BETWEEN ROBERT CARLTON AND Ocean Olympic

Exhibit IV-A: Certificate of Incorporation, July 10, 1991, for Adanac Fisheries, Inc.

Exhibit IV-B: Certificate of Amendment, April 9, 1996, changing Adanac Fisheries, Inc., to Ocean Olympic Fisheries, Inc. (Ocean Olympic).

Exhibit IV-C: Abstract of Title for F/V OCEAN OLYMPIC, Official No. 592441, ADFG No. 735973. Ocean Olympic acquired the Vessel on July 22, 1991, and continued to own the Vessel until August 30, 2001.

Exhibit IV-D: Ocean Olympic Fisheries, Inc., corporate documents showing Robert Carlton's involvement with Ocean Olympic from August 1991 to January 2007.

Exhibit IV-D-1: Consent in Lieu of Meetings of Shareholders and Directors of Adanac Fisheries, Inc., dated August 20, 1991

Exhibit IV-D-2: Resolutions of the Board adopted on July 11, 1991, and July 24, 1991.

Exhibit IV- D- 3: Consent in Lieu of Special Meeting of the Board of Directors of Adanac Fisheries, Inc. dated October 8, 1991.

Exhibit IV-D- 4: Stock Redemption Agreement dated July 11, 1997, resulting in Robert Carlton and Kim Hansen becoming the two remaining shareholders in Ocean Olympic.

Exhibit IV-D-5: Omnibus Resolution of Ocean Olympic by Consent of Shareholders and Directors dated March 30, 2005, signed by Robert Carlton as director and shareholder.

Exhibit IV-D-6: First Amended and Restated Shareholder Agreement for Ocean Olympic dated April 5, 2005, between Robert Carlton and Kim Hansen.

Exhibit IV-D-7: Assignment and Stock Power dated January 31, 2007, cancelled share Certificate Number 6 and related resignation of Robert Carlton as director and officer of Ocean Olympic, dated January 31, 2007.