

M E M O R A N D U M

TO: Council, SSC and AP Members
FROM: Jim H. Branson
Executive Director
DATE: November 29, 1983
SUBJECT: Tanner Crab Fishery Management Plan

ACTION REQUIRED

None. Information Only

BACKGROUND

Commissioner Collinsworth has requested that the concepts of pot limits and exclusive registration areas be placed on the agenda for Council discussion of their future use as management tools in the Alaskan Tanner crab fishery.

Amendment #9, which establishes a framework procedure for setting fishing seasons and updates MSY and ABC values, was approved by the Council for Secretarial review at the July meeting. The amendment package is complete except for the preamble, notice of proposed rulemaking and implementing regulations. These documents are being completed by the NMFS Regional Office and the entire amendment package should be ready for submission to the Secretary in the next few weeks.

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GOVERNOR SHEFFELDS TASK FORCE ON FISHERIES
ALASKA SEAFOOD MARKETING INSTITUTE AND MEMBER,
DAVID O. OSTERBACK, BOARD MEMBER

SINGEELY,

TO PROTECT A VIABLE ECONOMY.

PLEASE HELP US TO PROTECT OUR IN-LAND WATER RESOURCES AND

FISHERY TO BECOME ANOTHER PAST RESOURCE.

BY LARGE OUT OF STATE VESSELS. WE DONT WANT THE TANNER CRAB

AREA. THIS IS DUE TO POOR MANAGEMENT AND EXCESSIVE FISHING

PAST TO ALL THE COASTAL VILLAGES IN THE ALASKA PENINSULA

RESOURCE. KING CRAB, SHRIMP AND HALIBUT ARE FISHERIES OF THE

WE NEED A SUPER EXCLUSIVE AREA TO PROTECT OUR LAST FISHERY

FISHERY.

SUPER EXCLUSIVE MANAGEMENT AREA FOR THE 1984 TANNER CRAB

MANAGEMENT COUNCIL REGULATE THE ALASKA PENINSULA AS A

I STRONGLY SUPPORT THAT THE NATIONAL PACIFIC FISHERIES

ANCHORAGE AK 99510 0041

PO BOX 103135 274-4563

PMS MR JIM CAMPBELL CHAIRMAN NORTH PACIFIC FISHERIES MGMT COUNCIL

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ACTION	ROUTE TO	INITIAL
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Telegram



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D-2 SUPPLEMENTAL

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**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service
P.O. Box 1668
Juneau, Alaska 99802

AGENDA D-2
SUPPLEMENTAL
DECEMBER 1983

	Exec. Dir.	
	Deputy Dir.	
	Admin. Off.	
	Exec. Sec.	
	Chief Ass't	
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November 26, 1983

Mr. Don W. Collinsworth, Commissioner
Alaska Department of Fish and Game
P.O. Box 3-2000
Juneau, AK 99802

Dear Don:

In your letter of October 25, 1983, you express concern that the rejection of Tanner crab Amendment 10 by the Council, consistent with my recommendation, "may have broad ranging and significant impact on the ability of the Alaska Board of Fisheries to manage fisheries of joint concern using traditional regulatory methods." You then recount some known or potential benefits of pot limits and registration areas as management techniques, question whether the Council or I gave recognition to such merits, and finally ask whether I have determined that these traditional management tools are now precluded from use absolutely or if there are realistic conditions under which they may be used.

In responding, let me initially assure you that, in my view, no reasonable management procedure or tool should be or could be categorically precluded from approval by the Secretary. Doing so in advance of proposing application or use of a particular management procedure would be even more improbable. Nevertheless, some fairly rigid standards and criteria exist that, if not met or satisfied in a proposed procedure or measure, may render approval difficult, if not impossible. In this regard, the Magnuson Act national standards provide important guidance. Executive Order 12291 imposes additional constraints, particularly in adequately demonstrating a need and that a proposed action will meet that need. The Regulatory Flexibility Act, the National Environmental Policy Act, and the Paperwork Reduction Act impose various other limits or requirements relative to federal actions. All of these requirements must be considered by NMFS and the Council before any fishery management measure may be implemented by federal regulation, even though the Alaska Board of Fisheries might implement the same measure for State purposes without taking these requirements into account. I think that this difference is not fully recognized by all the involved parties and this probably contributed to the problem that prompted your letter.

As expressed to the Council, my first concern with the pot limit provision of Amendment 10 was that it was not enforceable. This opinion reflected the best judgement of our enforcement staff, bolstered by the State's own experience this with kind of regulatory measure. While the Division



of Fish and Wildlife Protection contends that enforcement is feasible, that contention, to our knowledge, has yet to be demonstrated by a single successful enforcement action on pot limits in the Tanner or king crab fisheries over the span of years that Alaska has included such provisions in its regulations. Enforcement seems still to be an issue as indicated by the measures taken by the legislature (Sec. 1, ch. 103, SLA 1977) and the Board (Sec. 16.05.632) to determine how much gear is being fished where pot limits are imposed in the king crab fishery.

A consensus, or near consensus, exists that the pot limit proposed in Amendment 10 is not needed for biological reasons. It might also be that few fishermen would have incentive to use more than 200 pots in the Kodiak Tanner crab fishery (the average now being 130 pots/vessel and probably near optimal efficiency across the fleet). Thus, the question arises as to what purpose the amendment might serve other than economic allocation (potential problems with national standards 5, 7, and general requirement 2a of E.O. 12291).

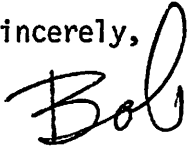
The information available to us suggests that designating the Chignik/South Peninsula and Southeast/Yakutat districts as exclusive registration areas would not have accomplished the intended effect, which I understand was to be that of limiting effort. The underlying justification of exclusive registration areas is that pulse fishing by transient vessels is prevented, thus sustaining the effort/resource proportions on which a local fleet may have evolved. The Council's analysis of the Chignik/South Peninsula area indicated that although the number of vessels in this area had increased, most of the increase is attributed to the local fleet.

Establishing the Southeast/Yakutat Districts as exclusive would only partially control effort because, here too, most of the new vessels in the 1982/83 fishery came from these districts. Although exclusive registration would prevent fishing by transient vessels, I believe that the simultaneous opening dates of these districts with many of the districts in the westward area would also accomplish the same result. A skipper is not likely to stop over in an area with a small resource base when he knows that the season in an area with the major fishery is opening simultaneously. Our analysis suggests that these exclusive areas are inconsistent with general requirement 2a of E.O. 12291 because their intended effect as a conservation measure likely would not be accomplished, and because they do not appear to be needed, in view of the established simultaneous opening dates.

Our views on the merits or approvability of Amendment 10 were not the only obstacles to its approval by the Council: the analysis by the Council staff resulted in a negative recommendation, the AP opposed approval, and the SSC voted unanimously to oppose the amendment.

In summary, Don, we cannot now preclude consideration of pot limits or exclusive registration areas as appropriate management measures in the fisheries conservation zone, but rather would review specific proposals relative to their need, efficacy, and conformance with the Magnuson Act and other applicable law. Where we are able, we want very much to work with you to avoid disruption and confusion in the fisheries. Further, we hope we can be of assistance, possibly along with Council staff, in orienting the new members of the Alaska Board of Fisheries to the complexities of the federal system. We would be pleased to discuss with you at your convenience the best time for such a briefing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob", written in dark ink.

Robert W. McVey
Director, Alaska Region

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

Bill Sheffield, Governor

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 465-4100

October 25, 1983.

Mr. Robert W. McVey
Regional Director
National Marine Fisheries Service
P. O. Box 1668
Juneau, AK 99802

Dear Mr. McVey:

When the North Pacific Fishery Management Council (NPFMC) rejected Tanner crab amendment package #10 on a five to six vote, it took an action which may have broad ranging and significant impact on the ability of the Alaska Board of Fisheries to manage fisheries of joint concern using traditional regulatory methods. Pot limits and registration areas are management techniques which have been used for many years to achieve social, economic, and conservation objectives. The use of pot limits, for example, predates statehood to the time when Alaskan fisheries were under federal management. The intent of both of these regulatory techniques is to distribute effort and provide a degree of protection to local fisheries. For pot fisheries, the number of pots is, for all practical purposes, the only capital input in the productive process which can be limited to achieve conservation, social, or economic objectives without a limited entry program.

I believe that the position of your agency on these two techniques is highly significant. I could have accepted the rejection of Amendment #10 if the majority had opposed the particular economic and distributional impacts of the regulations and had preferred some other distribution of social and economic benefits. On the record, however, the majority did not discuss the allocative issues at all. Further, they did not consider how rejection of the pot limit and exclusive registration areas would affect achievement of the objectives stated in the Tanner crab plan (Objectives 2.1.3 and 2.1.4.d.). The Council appears to have rested its decision on the strength of your testimony that gear limitations, and in this case pot limits and exclusive registration areas, are not legal and allowable management tools under your administrative interpretation of the Magnuson Fisheries Conservation and Management Act and other federal rules and regulations. If this is your resolute position, the impact on our ability to effectively manage fisheries of joint concern will be depreciated; perhaps significantly so.

At the meeting you said that the proposed pot limit and registration areas were "unapprovable." In the case of the pot limit, you justified your position by stating that pot limits are unenforceable. You apparently discredited the testimony of the principal enforcement agency, the Division of Fish and Wildlife Protection in the Alaska Department of Public Safety, which maintained that pot limits were enforceable under the proposed management scheme.

Mr. Robert W. McVey

-2-

October 25, 1983

I am trying to establish whether you have determined that these two traditional management tools are now precluded from use absolutely or if there are realistic conditions under which they can be used. It does me no good if you respond, "It depends..." or, "If they can be shown to be consistent with the MFCMA and other applicable rules and regulations." I need a definitive statement of National Marine Fisheries Service policy on these two management techniques.

Sincerely,


Don W. Collinsworth
Commissioner

cc: Jim Branson
Beth Stewart
Bill Gordon
Steve Pennoyer

Council should reaffirm the basic management rationale of Amendment #10 and concentrate attention on the issue of the Federal administration's interpretation of the Magnuson Act.

Pot limits and exclusive registration by their nature tend to allocate the harvest of resources amongst beneficial uses and prevent any one segment of the industry from dominating the harvesting or processing. Two allocative objectives were adopted by the Council in the FMP and pot limits and exclusive registration reflect these objectives:

2.1.3 Promote fair and equitable allocation of identified available resources in a manner such that no particular group acquires an excessive share of the privileges.

2.1.4.d. Management measures, while promoting efficiency where practicable, should seek to avoid disruption of existing social and economic structures where fisheries appear to be operated in reasonable conformance with the Act and have evolved over a period of years as reflected in community characteristics, processing capability, fleet size and distribution. These systems and the resource upon which they are based are not static, but change in the existing regulatory regime should be the result of considered action based on data and public input.

Participants in the crab industry have supported changes in the way in which the fishery is conducted, but not rapid changes. Immediate elimination of certain regulations could have major reallocational effects, a situation which is contrary to State policy as well as my interpretation of the intent of the Magnuson Act. In fact, rejection of Amendment 10 may have the effect of revolving any pot limit in Kodiak and changing a regulation which had been on the books and adopted through an extensive public hearing process.

Although pot limits and exclusive registration areas are primarily allocation measures, certainly they can have a beneficial effect on the management and conservation of the resource. These measures can:

- 1) reduce the volatility of the fishery;
- 2) distribute fishery effort spatially and temporally;
- 3) permit better monitoring of fleet effort and movements;
- 4) permits a more orderly fishery which allows the harvest of the entire stock while reducing the concern for overharvesting certain stock segments;
- 5) reduce the problem of deadloss of crab and incidental species such as halibut from poorly tended fishing gear;
- 6) reduce the incidence of in the pot mortality when lost gear continues to fish; and
- 7) reduce the hazards to navigation.

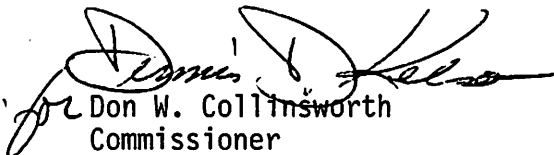
To reject these exclusive registration areas and pot limits as management tools would in fact reallocate those resources, the ramifications of which have not been adequately considered by the Council. Such action fails to acknowledge the objectives of the plan, the existing socioeconomic framework under which the fishery operates, and the consensus of the established industry.

The Alaska Board of Fisheries and the Council routinely make difficult allocative decisions which attempt to balance the goals of competing users for a limited common property resource. In the case of the Alaska crab fishery, certain non-Alaska interests have charged that such a practice is discrimination and in violation of the National Standards. Neither the Board nor the Council have "discriminated" against these fishermen. The Board and Council have "allocated", which is an accepted and common practice in fisheries management. Did the Board and Council discriminate against net fishermen in the Southeastern Alaska FCZ salmon fishery by banning net gear? No, they made an allocation decision based on historical fishing practices. Did the Pacific Fisheries Management Council discriminate against large trawlers in the rockfish fishery when vessel landing limitations were imposed? Certainly not. The effort was limited to assure that processing facilities coastwide would not suffer major economic hardship. Consider also the allocation of a limited salmon resource between recreational and commercial interest along the Pacific Coast. Is one group being discriminated against to the benefit of the other?

The examples go on. My point is that the charge of discrimination in the crab fishery is unfounded and is in fact, the attempt of some users to disrupt the existing rational allocation of the resource.

I urge the Council to reconsider the use of pot limits and exclusive registration areas. These tools are reasonable, and comport with the requirements of the FMP, the Magnuson Act, and other appropriate Federal law. To reject them could have reallocative effects which have not been adequately addressed by the Council.

Sincerely,


Don W. Collinsworth
Commissioner

cc: Beth Stewart, Alaska Board of Fisheries
NPFMC Members

We, the undersigned express our desire to support the Super Exclusive Registration Area Proposal for Alaska South Penninsula.

Justifications are:

- 1) Chignik area stocks have fallen from a catch of $3\frac{1}{2}$ million pounds in 1983 to an expected catch of $3\frac{3}{4}$ million pounds in 1984, due to the expanded Bering Sea fleet participation.
- 2) South Penninsula Seine fleet presently has adequate boats and gear to harvest the stocks, which are stable, but at an all time low. We feel that increasing the current fleet could cause a catastrophic decline of stock as indicated by Alaska Department of Fish & Game.
- 3) With unlimited participation this fisheries would ultimately continue to decline and cause undue economic hardship for the local people in the South Penninsula area. With the closure of the King Crab fisheries in Sand Point, King Cove, and Chignik areas we are more dependent on the Tanner Crab fishery than ever before, therefore it is increasingly important to limit the efforts on the existing stocks of Tanner Crab.

Your favorable consideration would be appreciated. Copies of this document with signatures would be mailed directly.

<i>Lynn R. Strydom</i>	<u>383-4101</u>
<i>Randy J. Johnson</i>	<u>383-2474</u>
<i>Arthur J. Holmberg</i>	<u>383-2501</u>
<i>John V. Bergeson</i>	<u>383-3177</u>
<i>Paul E. Gundersen Sr</i>	<u>383-2631</u>
<i>Allen D. Kuchersoff</i>	<u>383-2161</u>
<i>Deane P. Gundersen</i>	<u>383-3991</u>
<i>Will [unclear]</i>	<u>383-2109</u>
<i>Jack R. Foster Jr.</i>	<u>383-3633</u>
<i>Edward G. Jackson</i>	<u>383-4181</u>
<i>Carl Carlson III</i>	<u>383-2101</u>
<i>Douglas Holmberg</i>	<u>383-2501</u>
<i>John Dolwin</i>	<u>383-4288</u>
<i>Paul Gundersen</i>	<u>-3611</u>
<i>Richard Rochester</i>	<u>383-3663</u>
<i>Ruel Holmberg Jr</i>	<u>383-4455</u>
<i>David O. Osterback</i>	<u>383-3701</u>
<i>David Osterback</i>	<u>383-6363</u>

the undersigned express our desire to support the Super
Exclusive Registration Area Proposal for Alaska South Peninsula.

Justifications are:

- 1) Chitina area stocks have fallen from a catch of 3 1/2 million pounds in 1982 to an expected catch of 1 1/2 million pounds in 1984, due to the expanded Bering Sea fleet participation.
- 2) South Peninsula seine fleet presently has adequate boats and gear to harvest the stocks, which are stable, but at an all time low. We feel that increasing the current fleet could cause a catastrophic decline of stock as indicated by Alaska Department of Fish & Game.
- 3) With unlimited participation this fisheries would ultimately continue to decline and cause undue economic hardship for the local people in the South Peninsula area. With the closure of the King Crab fisheries in Seward Point, King Cove, and other areas we are more dependent on the King Crab fishery than ever before, therefore it is increasingly important to limit the efforts on the existing stocks of Tanner Crab.

Your favorable consideration would be appreciated. Copies of this document with signatures would be mailed directly.

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[Handwritten signatures in red ink]

Joel R. Foster Jr
Box 125
Sand Point, AK 99661



North Pacific Fisheries Management
Council
Box 103136
Anchorage, AK 99510

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