

**North Pacific
Fishing Vessel
Owners' Association**

September 22, 1986

Mr. James O. Campbell, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Jim:

As President of the NPFVOA and a strong supporter of federal fisheries management in the U.S. FCZ, I wish to express my deep regret that I am unable to be present during Council consideration of its future role in crab management. I am a professional crab fisherman, and will be participating in the Bristol Bay red king crab season - as will many of those affected by the Council action on this issue.

The NPFVOA is an association of large fish boat owners who participate in the crab and trawl fisheries off Alaska. The association was formed in 1969, in order to deal with crab management issues. As the crab stocks declined our membership was obliged to branch out into trawling, and the association began to deal with trawl questions, as well. At this time 33% of our members consider themselves to be crab fishermen only, 47% state that they engage in both crab and trawl fisheries, and 20% engage in trawling, only. Many of our members own more than one vessel, of more than one type - crabbers, trawlers, and factory trawlers. Our objective has been, and remains, effective regulation of the industry with emphasis on resource conservation and cooperation between gear types. In this regard you may recall the industry effort we coordinated last fall to find a solution to crab bycatch problems in the flounder trawl fishery.

I want to express my deeply-held conviction, developed over the years since 1962 when I started crab fishing off Alaska, that federal management is appropriate for fisheries conducted in the U.S. FCZ. The Magnuson Act was specifically designed to balance the interests of fishermen from different states, and the NPFMC was put in place to make the process work in federal waters off Alaska. I sincerely hope that the Council will do the job set out for it by the law.

Again, I regret that I am not able to participate in the Council discussions on this very important issue.

Sincerely,


President



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Mr. James O. Campbell, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

RE: Council Role in Crab Management

Dear Jim:

The NPFVOA is an association of large vessel owners who fish for crab and finfish in the U.S. FCZ off Alaska. We would like to restate our position on crab management.

I. THE NPFVOA FAVORS FEDERAL MANAGEMENT OF CRAB STOCKS OFF ALASKA UNDER AN FMP ADMINISTERED BY THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.

The MFCMA was adopted to provide federal management of fishery resources in the FCZ. Recognizing the problems inherent in state management of these resources, Congress decided that management should be regionalized, and established uniform standards and procedures to ensure that fisheries would be managed for the benefit of the entire nation. Nonresident fishermen have a vital stake in the crab fisheries in the FCZ off Alaska, and the Council was designed to balance the interests of competing domestic fishermen - the states of Washington and Oregon have voting members on the Council and its Advisory Panel.

II. THE ALASKA BOARD OF FISHERIES IS NOT THE APPROPRIATE GROUP FOR MANAGEMENT OF FISHERIES IN THE U.S. FCZ.

Policies established by the Board are implemented through ADF&G, which is charged with a duty to manage state resources "in the interest of the economy and well being of the state..." The Board balances competing state interests effectively, but cannot reasonably be expected to depart from its statutorily-established orientation. The Board is composed entirely of Alaska residents - nonresident fishermen are not represented - and its management actions are not guided by specific standards like those set out in the Magnuson Act. During its decisionmaking process the Board is not obliged to make available to the public analyses of the biological and socioeconomic impacts of alternative management measures. This makes meaningful participation in its deliberative process difficult. The Board travels extensively in Alaska, but does not meet in Washington and Oregon. Decisions reached in one community may be modified in another, and nonresident fishermen are not in a position to have their representatives travel with the Board.

o Mr. James O. Campbell
September 22, 1986
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III. AGREEMENT ON AN ALTERNATIVE TO FULLY-ORTHODOX FEDERAL
MANAGEMENT MAY BE POSSIBLE.

Any acceptable alternative to federal management under the Council would have to provide adequate protection for the interests of nonresident fishermen. At a minimum this would mean an FMP, adequate documentation of alternatives during the deliberative process, participation in that process by professional federal managers, and a formal review of the record created for consistency with the FMP, the Magnuson Act, and other applicable federal law. Formal review of the record could take place after regulations became effective against nonresident fishermen, if the other safeguards function effectively. The record would facilitate effective participation in the decisionmaking process, and would provide a basis for review by the Secretary of Commerce and the courts. Such a record could be created in a timely fashion by one or more of several competent agencies - the Council staff, staff at NMFS/Juneau, staff at the NWAFC and staff at ADF&G. The burden need not be placed on the state, and need not delay the management process.

We sincerely hope that the Council will find an effective way to manage crab stocks in the U.S. FCZ under federal principles. We will do anything we can to help.

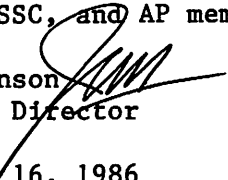
Yours,



Thorn Smith
Executive Director

M E M O R A N D U M

TO: Council, SSC, and AP members

FROM: Jim H Branson 
Executive Director

DATE: September 16, 1986

SUBJECT: Tanner and King Crab Fishery Management Plans

ACTION REQUIRED

- (a) Discuss Council's future role in crab management and provide direction to the plan team.
- (b) Provide recommendation on 1986 directed C. bairdi pot fishery after reviewing 1986 NMFS trawl survey results.

BACKGROUND

- (a) Future crab management discussion.

In March the Council voted to suspend Tanner crab regulations until further notice following a review of continuing problems with federal Tanner crab management. The decision was made because the Tanner Crab FMP does not have enough operational authority to effectively manage the fishery. NMFS should be able to give us a status report on suspending the regulations.

A Plan Team discussion paper exploring alternatives for Council/federal management was presented at the June meeting. The alternatives were:

- A. Alternative 1: No FMP.
 - Option 1. Withdraw and terminate the FMP.
 - Option 2. A joint statement of principles without an FMP.
- B. Alternative 2: An FMP that delegates management responsibility to the state.
- C. Alternative 3: Retain the FMP.
 - Option 1. Complete revision of FMP and regulations.
 - Option 2. Selective revision of the FMP and regulations to eliminate procedural problems.
 - Option 3. Suspend regulations only, placing the FMP on the shelf. Develop a Joint Statement of Principles if necessary.

The Council reviewed and released the document for public comment beginning July 7 and ending September 12. A summary of the seven comments received is in your book as item D-1(a)(1). All the comments were sent to you in recent Council mailings except for one letter received after the last mailing. It is item D-1(a)(2). The Council also asked NMFS to analyze the Tanner crab FMP and determine what changes are necessary to provide effective management. Their report, which could be the basis of a plan amendment, is item D-1(a)(3). NMFS is prepared to review this option with you. After reviewing the above alternatives, considering both king and Tanner crab management, the Council should select a preferred alternative and provide guidance to the Plan Team on amendments and scheduling.

(b) Council recommendation on 1986 directed C. Bairdi fishery.

The Bering Sea C. bairdi Tanner crab fishery has been closed since 1985 due to the poor condition of the resource. In January 1986, the SSC recommended no harvest because the stock was below that capable of producing MSY. In March the Council unanimously adopted the recommendations of the AP Tanner crab bycatch subcommittee on bycatch limits in the joint venture and foreign groundfish fisheries. Among the recommendations was a statement that a 1986 C. bairdi fishery would be considered if the results of the NMFS summer trawl survey established a Bering Sea C. bairdi population of 72 million crab or more, even though it might be below a level capable of producing MSY.

The preliminary results of the NMFS Bering Sea trawl survey will be available at this meeting. The Council should decide whether to recommend a 1986 directed fishery. Currently, state regulations open this fishery on January 15. If the Council believes there is sufficient biological and socioeconomic rationale to justify a fishery it can:

- 1) Recommend that a 1986 fishery occur by requesting that NMFS implement an Emergency Rule.
- 2) Petition the Board of Fisheries to adopt an Emergency Rule changing the January 15 opening date.
- 3) Recommend that a C. bairdi fishery be conducted as scheduled (January 15, 1987).

The Council will receive a recommendation from the AP Tanner crab bycatch subcommittee and a report from Bob Otto on what's available to harvest, if any.

TANNER CRAB MANAGEMENT ISSUES PAPER

PUBLIC COMMENT SUMMARY

INTRODUCTION

During the June 1986 meeting, the North Pacific Fishery Management Council released for public comment a discussion paper on future options for federal Tanner crab management. The paper, prepared by the Plan Team, described several alternatives ranging from no federal management, to federal delegation of authority to the State of Alaska, to complete federal management. The Council invited public comments on this issue in preparation for a discussion of this topic at this meeting. The review period began on July 7 and ended on September 12, 1986. During the review period, seven comments were received from a U.S. Senator, fishermen, and fishermen's organizations. This summary of the comments was prepared to serve as a reference during the Council meeting. It is not a substitution for the original comments sent to you in recent Council mailings and it only summarizes the major points of each submission. If details are desired, the reviewer should refer to the original comments.

The comments are summarized below in alphabetical order by commentor. The name of the author, his or her occupation or association are provided.

Arne Aadland, North Pacific Fishing Vessel Owners' Assn., Seattle - supports retention of the Tanner crab FMP with selective revision to the plan and regulations to eliminate procedural problems (Alternative 3, Option 2). NPFVOA believes that Congress intended that fisheries in the EEZ be federally managed and on a regional basis.

Robert Alverson, Fishing Vessel Owners' Assn., Seattle - supports retention of the FMP and a selective revision of the FMP and regulations to eliminate procedural problems (Alternative 3, Option 2). The FVOA urges this action because they feel that where resources are exploited in the EEZ with participation from residents from no less than four coastal states, the federal government must supply a neutral forum for management decisions.

Slade Gorton, U.S. Senator from Washington - believes that federal responsibility in managing king and Tanner crab resources is fundamental and simply cannot be abdicated. He hopes that the differences that exist between the State of Alaska and the National Marine Fisheries Service over the king crab plan can be resolved satisfactorily in the near future.

Oliver Holm, Kodiak Longline Assn., Kodiak - supports termination of the FMP (Alternative 1). The inconsistencies between state and federal regulations would be difficult to correct over the long term. A relatively simple and flexible management regime that is capable of responding rapidly to biological and socioeconomic changes within the fishery is necessary and can be provided by the state.

Steve Hughes, Midwater Trawlers' Cooperative, Seattle - supports federal management of all EEZ resources (Alternative 3). MTC urges that the Council retain federal oversight, manage consistent with the Magnuson Act and overcome those obstacles curtailing sound management under fully implemented king and Tanner crab FMPs.

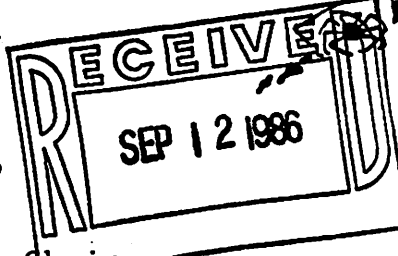
Ron Peterson, Alaska Crab Coalition, Seattle - supports withdrawal of the Tanner Crab FMP with cooperative state/federal management conducted under a joint statement of principles (Alternative 1, Option 2). In making this recommendation, ACC requests that the Alaska Board of Fisheries manage not just the directed fishery, but the total exploitation of this resource. The ACC views the above recommendation as a means to avoid duplication of regulations which are sometimes inconsistent. The ACC also recommends that under a joint statement, the Board and Council consider development of a bona fide industry workgroup without regard to residency. This workgroup would act as consultants in preparation of a new management program for the Bering Sea/Aleutian Islands crab fisheries.

Joseph Wabey, Reidar Lyman, Severin Hijelle, fishermen, Seattle - support retention of a federal FMP for both king crab and Tanner crab (Alternative 3). They believe that fishery resources in the EEZ should be managed for the benefit of all citizens under federal Magnuson Act standards. They are fearful that state management would lead to discrimination among users of the resource. In their opinion, federal Tanner crab management has been satisfactory.

Alaska Crab Coalition (A.C.C.)

(206) 547-7560
3901 Leary Way (Bldg.) N.W.,
Suite #9
Seattle, WA 98107

September 11, 1986



James O. Campbell, Chairman
North Pacific Fisheries Management Council
P.O. No. 3136DT
Anchorage, Alaska 99510

Dear Jim:

This letter is in response to the NPFMC's request for industry recommendations concerning the future management of tanner crab fisheries. The recommendations outlined here also apply to the king crab fisheries.

The Alaska Crab Coalition has been involved in the ongoing discussions within the NPFMC this past year regarding the future of crab management. At the same time, it has also been closely involved in the promulgation of conservatory regulations with the NMFS and the State of Alaska Dept. of Fish and Game to protect and enhance the rebuilding of king and tanner crab stocks.

Our experience this year and over the past fifteen years as major harvestors of the 1970's king crab cycle, leads us to reject the concept of federal management of the crab fisheries under an FMP. The system does not provide the necessary flexibility for effective management. Included within the system, is the NMFS laissez faire fisheries policy that has proven not to be a sound formula for long range stable harvests of fisheries resources. The policy leaves us with little assurance of the continuation of our crab fisheries in the future.

In contrast, the State of Alaska and the Board of Fisheries have a long standing policy goal to manage crab fisheries in a manner that establishes stability and eliminates extreme fluctuations in annual harvests. To this end, the State has a history of taking the lead in developing regulatory measures to attain this goal. The Board, along with the ACC "recognizes that this policy will not maximize physical yield because maximum physical yield will not necessarily produce the long-term optimum yield."

After lengthy consideration of the management alternatives, not only by the Board of Directors, but at a recent meeting of the general membership, now comprised of the owners of 50 Bering Sea

crab vessels, the ACC has developed a position in support of the management of tanner and king crab fisheries under a Joint Statement of Principles, without an FMP. In making this recommendation, we request that the Board of Fisheries manage not just the directed fishery, but the total exploitation of the resource.

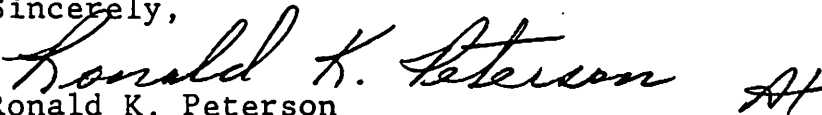
For the reasons outlined in the "Discussion Paper of Long-Term Alternatives for Tanner Crab Management," outlining the inherent problems of FMP management, the ACC views the above recommendations as a means to avoid duplication of regulations that are sometimes inconsistent; and which at other times result in violations of national standards. (See the enclosure.)

ACC fishermen do not feel that a federal FMP is necessary to ensure that state management is not in violation of the Magnuson Act standards and other federal law, particularly as regards State of Alaska discrimination against nonresident fishermen. Enclosed you will find a legal memorandum that aptly responds to the issue and cites Magnuson Act and Constitutional protections.

As part of our recommendations, the ACC requests that the NPFMC and the State of Alaska Board of Fisheries consider the development of a bona fide industry work group, without regard for residency. It is suggested the group be charged with the responsibility for developing a management operation plan for the Bering Sea and Aleutian Islands crab fisheries. Composition of the panel might include state and federal biologists, fishermen, processors, a NPFMC member, and Alaska Dept. of Fish & Game staff personell to assist in developing a comprehensive management plan that would be responsive to the needs for in-season adjustments in the fisheries.

In conclusion, the ACC appreciates the Council's commitment to dealing with the jurisdictional problem of crab management. We also appreciate the extension of the comment period until September 12th, recognizing the extension of the tanner crab season. As it turned out, the extended comment period enabled us to review the issue extensively with our members, many of whom had just recently returned from the Northern District of the Bering Sea.

Sincerely,


 Ronald K. Peterson
 President

cc: Anthony J. Calio, Administrator, NOAA
 Don W. Collinsworth, Commissioner, ADF & G
 Washington and Alaska Congressional Delegations

September 8, 1986

MEMORANDUM

Re: Legal Prohibitions on Discrimination by the State of Alaska Against Nonresident Fishermen

Background

The North Pacific Fishery Management Council ("Council") is currently considering various options for the management of the King Crab resource by the State of Alaska in the Fishery Conservation Zone ("FCZ"). Currently, nonresident fishermen are engaged in King Crab fishing off the coast of Alaska.

Issue

Whether the State of Alaska may lawfully discriminate against nonresident fishermen in the management of King Crab.

Discussion

The State of Alaska may not lawfully discriminate against fishermen on the basis of residency. Any regulation of King Crab in the FCZ would be subject to Federal and State constitutional prohibitions on discriminating against nonresidents. Furthermore, and less importantly, if management by the State of Alaska is subject to a fishery management plan prepared pursuant to the Magnuson Fishery Conservation and Management Act ("Magnuson Act"), the explicit ban found in National Standard 4 on discriminating between residents of different States would apply. (16 U.S.C. § 1851(a)(4)).

Constitutional Protections

Discrimination by Alaska against nonresident fishermen

would be barred by various provisions found in the United States Constitution. First, under the Commerce Clause (Article I, Section 8), States are not permitted to discriminate against interstate commerce, particularly where the object or effect of the legislation is to protect local economic interest against competition from across State lines. See Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959). Second, the Privileges and Immunities Clause (Article IV, Section 2), has been interpreted to prohibit discrimination by one State against citizens of another State, where fundamental rights, such as the right to pursue a livelihood, are involved. See Hicklin v. Orbeck, 437 U.S. 518 (1978). This is especially true when the reason for the discriminatory provision is State economic protectionism. See Sup. Ct. of N.H. v. Piper, 470 U.S. ____, 84 L.Ed. 2d 205, 214 n.18 (1985). Finally, the basic protection afforded under the Privileges and Immunities Clause is also found in the Equal Protection Clause (14th Amendment), which, unlike the Privileges and Immunities Clause, applies to corporations, as well as to individuals. See Metropolitan Life Insurance Co. v. Ward, 470 U.S. ____, 84 L. Ed. 2d 751, 760 (1985); Elkins v. Moreno, 435 U.S. 647 (1978).

The Alaska State Constitution also contains an equal protection clause (Article I), which has been interpreted as prohibiting discrimination between residents and nonresidents, based solely on the object of assisting one class over another. See Lynden Transp., Inc. v. State, Sup. Ct. Op. No. 1120 (File No. 2100, 532 P.2d 700 (1975)). In Brown v. Anderson, 202 F.

Supp. 96 (D. Alas. 1962), a case dealing with nonresident fishing restrictions, the court held that placing restrictions on nonresident fishermen on the basis of residency violated the Alaska State Constitution equal protection clause.

Magnuson Act Protection

Under National Standard 4 of the Magnuson Act, fishery conservation and management measures prepared pursuant to a fishery management plan are prohibited from discriminating between residents of different states.*/ Consequently, if the State of Alaska regulates King Crab pursuant to a fishery management plan, the protection afforded nonresidents by National Standard 4 will be available. However, it must be emphasized that, even without such statutory protection, constitutional guarantees against discrimination would prevail.

*/ In fact, the National Oceanographic and Atmospheric Administration has interpreted National Standard 4 as "an extension of the federal 'privileges and immunities' clause." 50 C.F.R. Part 602, Appendix A to subpart B (Standard 4).

ALASKA REGION, NATIONAL MARINE FISHERIES SERVICE
PROPOSED AMENDMENTS TO THE TANNER CRAB FISHERY MANAGEMENT PLAN

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

September 16, 1986

Alaska Region, National Marine Fisheries Service (NMFS)
Proposed Amendments to the Tanner Crab Fishery Management Plan

Two critical parts of the present Tanner crab Fishery Management Plan (FMP) must be amended to facilitate timely management decisions in cooperation with the State of Alaska. These parts deal with optimum yield (OY) and inseason management (field order) authority. Both parts are interrelated and have caused most of the recent problems with cooperative State-Federal management of the fishery.

Amendment 9 to the Tanner crab plan updated the OY section of the plan. It presented the OY values as numerical ranges, as opposed to the previous point estimates, to provide flexibility in the OYs without requiring an annual plan amendment. However, the range in the OY values adopted was not wide enough to take into account the unexpected severe decline in the population level of several crab stocks. For example, the OY for C. bairdi Tanner crab in the Bering Sea is 5 to 28.5 million pounds. However, the catch has not exceeded the lower end of this range since 1983. In fact, there was no directed fishery allowed during 1986 due to the extremely depressed condition of the stocks. More importantly, the FMP is conspicuously silent concerning what annual harvest levels should be and how they are determined. This is difficult to understand given that the FMP is based, in large part, on the State of Alaska's management program which emphasizes management by annual harvest guidelines. This allows the use of the most recent and best scientific information to determine appropriate annual harvest levels. The most likely explanation for this oversight is that the drafters of the FMP assumed that the NMFS Regional Director would use field order authority, as he actually did for several years, to close seasons in federal waters concurrently with closures in adjacent state waters when the states harvest guidelines were reached. Problems with the inflexibility of the field order regulatory language, however, have severely limited the Regional Director's ability to exercise that authority.

The North Pacific Fisheries Management Council (Council) attempted to broaden the Regional Director's field order authority in amendment 9. However this portion of the amendment was disapproved by NMFS because it was too broad to qualify for the categorical exemption from the requirements of Executive Order 12291 by the Office of Management and Budget.

The problem with this portion of the plan is that the criteria for inseason adjustments are too narrowly defined to take into account many of the more common reasons to make management adjustments, including closing the fishery when an annual harvest guideline is reached. Specifically, the field order authority allows the Regional Director to adjust season dates only after determining that the following criteria have been met: (1) the condition of the Tanner crab stocks within the

given management area is substantially different from the condition anticipated at the beginning of the fishing season; and (2) such differences reasonably support the need for inseason conservation measures to protect the Tanner crab stocks. This narrow authority, combined with the absence of a mechanism for specifying annual harvest guidelines, creates a situation where the fishery cannot legally be closed when the appropriate number of crab are taken and overharvest could occur. Thus, to prevent the risk of overharvesting, the FMP must provide a mechanism to establish annual harvest guidelines and provisions for closure of the fisheries upon their achievement.

The requirement that inseason measures be necessary to "protect" Tanner crab stocks also prevents NMFS from extending a season if a Tanner crab stock should prove more abundant than was anticipated before the beginning of the fishing season or if the appropriate harvest amount has not been taken.

In addition, the time required for NMFS Regional Office preparation and review of field orders (normally two days) and Washington D.C. office review (normally four days) in some instances has created problems because declining stock abundance and high effort are causing increasingly short Tanner crab seasons. A more simple type of notice procedure would be desirable to allow for closures in a more timely manner.

Two specific changes to the FMP are recommended to attempt to remove the problems that have previously been encountered. The changes are (1) to framework the OY section; and, (2) to revise the inseason management authority delegated to the NMFS Regional Director.

OY Range

The first recommendation is to framework the OY section by broadening the OY range, establishing a procedure for determining annual harvest guidelines, and for closing the fishery upon their achievement.

Broader OY ranges will better reflect current and possible future stock conditions, while allowing for an annual harvest guideline to be set within the OY range based on the best scientific information available. As long as the annual harvest guideline falls within the broad OY range, no plan amendment would be necessary.

The OY ranges presented in 671.21 (a), Table 1 would be revised. An OY range could be established either for all Tanner crab, or separately by species for both the Gulf of Alaska and Bering Sea. The lower end of the range could be set either at zero to reflect the possibility that a scheduled fishery may not open if stocks are at a low level, or at the sum of the lowest recorded seasonal harvests from all areas or districts taken during a given time period. The upper end of the range could be

the sum of the highest season catches from the various areas or districts during a given time period. A base period of 1970 to 1986 would encompass the wide range in harvests experienced since the development of the fisheries (table 1).

Table 1. Historical low and high Tanner crab catches off Alaska by area (in pounds) during 1970-1986.(1)

Registration Area	District	Low Harvest	(Year) (2)	High Harvest	(Year) (2)
Southeastern	Southeast Yakutat	166,618	1970	2,845,983	1981
		2,000	1986	2,474,089	1979
Prince William Sound		0	1984	12,300,000	1973
Cook Inlet		1,591,015	1970	7,697,807	1973
Westward	Kodiak	7,436,414	1971	33,271,472	1978
	Chignik	23,343	1972	11,201,941	1976
	S.Pen.	1,789,883	1984	9,503,366	1974
	E.Aleut.	0	1972	2,624,016	1978
	W.Aleut.	0	1977	838,627	1982
	Bering Sea				
	<u>C. bairdi</u>	596	1986	66,115,621	1978
	<u>C. opilio</u>	0	1977	105,000,000(3)	1986

(1) Source: Alaska Department of Fish and Game Westward Region Shellfish Report to the Alaska Board of Fisheries March 1986, Statistical Area A and Lower Cook Inlet Shellfish reports to the Alaska Board of Fisheries March 1985, and unpublished data Alaska Department of Fish and Game.

(2) Most recent year.

(3) Estimate

Table 2. Optimum yield ranges for Tanner crab from the Bering Sea and Gulf of Alaska.

Alternative 1	0 - 148,872,922	bairdi
	0 - 105,000,000	opilio

	0 - 253,872,922	Total Tanner crab
Alternative 2	11,009,869 - 148,872,922	bairdi
	0 - 105,000,000	opilio

	11,009,869 - 253,872,922	Total Tanner crab

Each year an annual guideline harvest level will be determined for each area, district, subdistrict, and section. This will consist of a pre-season estimate of allowable catch based on the most recent information relating to stock status.

Prior to the beginning of the fishing year (November 1) the plan maintenance team (PMT) will consult with Alaska Department of Fish and Game (ADF&G) and the Northwest and Alaska Fisheries Center crab experts and present recommended harvest guidelines to the Council, normally at the September meeting. The council may modify the guideline level for individual areas or portions of areas based on all relevant factors including social and economic considerations as well as other sources of Tanner crab mortality. The harvest guidelines for all areas would be summed to produce a total harvest guideline to assure that the sum is within the OY range specified in the plan. If the total harvest guideline falls outside the range, the Council must either revise some or all of the individual harvest guidelines or amend the OY range. If the total harvest guideline falls within the OY range, the Council then would make its recommendations to the NMFS Regional Director. As soon as practicable after the Council has made its guideline harvest recommendations to the Regional Director, the Secretary will publish an initial notice in the Federal Register specifying the proposed guideline harvest levels. Public comments on the proposed guideline harvest levels and whether they are consistent with the objectives of the FMP will be invited for a period of 15 days after the notice is published in the Federal Register. A short comment period is necessary because of the short time between the September Council meeting and the beginning of the fishing year (November 1).

As soon as practicable after the end of the comment period, the Secretary will publish a second notice approving, disapproving, or partially disapproving the proposed season guideline harvest levels based on comments received and his determination on whether the guidelines are consistent with the objectives of the FMP, the national standards of the Magnuson Act, and other applicable law. These guideline harvest levels shall remain in effect until new guideline harvest levels are established.

Therefore, all guideline harvest estimates would need to be available for the September council meeting for new guideline harvest levels to be established prior to the beginning of the fishing year (November 1). If current survey results were not available at that time, the guideline harvest levels from the previous year would remain in effect, and no changes could be made until after the next council meeting, normally in December. At present all Tanner crab registration areas open in January except for the Western Aleutians area which opens on November 1.

All guideline harvest levels will be expressed in terms of weight of legal size male crab, except for the C. opilio fishery in which separate guideline harvest levels would be estimated for various sizes of crabs. The legal size is 5.5 inches or (140mm) carapace width for C. bairdi statewide except for Prince William Sound where it is 5.3 inches (135 mm). The legal size for C. opilio is 3.1 inches (79mm) carapace width although the commercially acceptable limit is presently in the 3.5 to 4 inch (90-100mm) size range.

The PMT will normally base its guideline harvest recommendations on the following factors. However, the team shall not be limited to only these factors, but may use any information that relates to the status of Tanner crab stocks.

Areas with no surveys

For management areas where no survey effort takes place the guideline harvest level will normally be based on historic fishery performance.

Areas with pot index surveys

The harvest guideline will normally be calculated for those areas surveyed with pot gear by comparing the percentage increase or decrease in relative abundance from the current survey to previous surveys. The harvest guideline is then adjusted to reflect the relative value of the current survey. Adjustments may be made based on indices of ovigerity, recruitment outlook and the size-age structure of the legal segment of the population.

Areas with trawl surveys

For those areas surveyed with trawl gear, the guideline harvest level is calculated based on the current year's survey population estimates and previously determined exploitation rates. The basic calculation entails multiplying the current estimate of legal or commercial-sized males by the exploitation rate. The exploitation-rate applied to C. bairdi is 0.4. This was arrived at in the early days of the Tanner FMP development based on exploitation experience with red king crab in Bristol Bay and has continued to this day. The exploitation rate for 4 inch C. opilio is 0.58 and is based on a 1977 analyses by Somerton and Low which used yield per recruit methodology. There has been a trend toward a lower market size limit for C. opilio in recent years and the exploitation rate for these smaller limits has been adjusted according to yield per recruit theory. These figures may be modified by indices of ovigerity, recruitment outlook and the size-age structure of the legal segment of the population.

Historically, pot surveys have been conducted in the following management areas: Southeastern, Prince William Sound, Cook Inlet, Kodiak, and South Peninsula. Trawl surveys have been conducted in the Bering Sea and Kodiak Management areas. Past fishery performance has been used to some extent in each of the areas to derive the guideline harvest level.

The OY section of the FMP and its implementing regulations would contain a provision requiring that a season would automatically close when the harvest guideline for a given area or portion of an area is reached. The Secretary would issue a simple closure notice which can be accomplished in substantially less time than that required for processing a field order which has been taking about six days.

Inseason Management Authority

While trawl surveys that estimate actual population abundance and pot surveys that estimate relative indexes of abundance are important sources of information for managing fisheries, there is some degree of error in each of these methods and stock conditions may change between the time of the surveys (usually July and August), and the beginning of the fisheries, normally November or later. Perhaps, ideally the surveys should be conducted just prior to the fishing seasons, however, Tanner crab estimates are only a portion of the trawl surveys, which also estimate king crab and groundfish abundance, and the pot surveys were originally designed for and still estimate king crab abundance.

Guideline harvest levels may be found to be unsuitable in light of unpredicted and unanticipated adverse or favorable stock conditions, such as the occurrences of soft shell crab with increased handling mortality or improved stock conditions with

increased catch per unit effort levels which are revealed inseason. Under these conditions, it is necessary for the Regional Director of NMFS to make inseason adjustments. The following change is recommended for the inseason management authority of the Tanner crab FMP.

(b) Inseason adjustments

(1) General. Following consultation with ADF&G, the Regional Director may modify the time and area limitations prescribed in section 671.21 of this part by issuing a notice of season adjustment in accordance with paragraph (a) of this section. Any such modification shall be based upon a determination by the Regional Director that (i) the condition of Tanner crab in any Federal registration area, district, subdistrict, or section specified in 671.26 of this part is substantially different from the condition anticipated in the FMP, including the seasons and harvest guidelines established according to procedures established by the FMP, or the condition of king crab or other crab stocks that may be subject to incidental harvest in the fishery is determined to be such that conservation adjustments to the Tanner crab fishery are necessary; and (ii) any difference in Tanner, king, or other crab stock condition reasonably requires a modification of time or area limitations if crab stocks are to be adequately conserved and managed.

(2) Data. In making this determination, the Regional Director may consider any of the following factors:

- (i) The effect of overall fishing effort within the area;
- (ii) Catch per unit of effort and rate of harvest of Tanner crab and other incidentally caught crab species;
- (iii) Relative abundance of Tanner crab and other incidentally caught crab species within the area;
- (iv) The proportion of immature or softshell Tanner crab and other incidentally-caught crab species being handled;
- (v) General information on the condition of Tanner crab within the area;
- (vi) Any other factors relevant to the conservation and management of Tanner crab.

If the FMP is amended along the lines of this proposal, both the season dates and harvest guidelines for each area will be

specified according to procedures contained in the FMP. Thus, any condition within the fishery that indicates the need for change from those guidelines or seasons would allow the Regional Director to make the determination that the condition of stocks is different from that specified in the FMP. This should supply sufficient flexibility to allow the Regional Director to respond to most management needs.

The inseason management authority is also expanded to allow adjustments to the Tanner crab fishery if necessary to protect incidentally caught king crab or other crab stocks.