


MEMORANDUM

TO: Board and Council Members

FROM: Clarence G. Pautzke  
Executive Director 

DATE: July 27, 1999

SUBJECT: Board of Fisheries Stand-down Requirements

**ACTION REQUIRED**

Board and Council consultation on groundfish trawl stand-down requirements.

**BACKGROUND**

In March the Board of Fisheries adopted revised versions of proposals 291 and 355 that would not only extend the exclusion period when no pot gear can be fished, from 14 to 30 days for the king crab and *C. bairdi* Tanner crab fishing season, but would include trawl gear in the exclusion period for the king crab and *C. bairdi* and *C. opilio* Tanner crab fishing seasons. The Board also moved the red king season start from November 1 to October 15th. These proposals as adopted comprise attachment 1 to this tab. Before the Council's April meeting, NMFS and I wrote to the Board seeking the rationale for their decisions. Our requests and their responses are in attachment 2. The Council then decided to request a meeting with the Board to discuss the changes. The resulting letter also is under attachment 2.

On May 14, the Board teleconferenced to review three petitions from affected parties. Attachment 3 identifies the persons that listened in from Seattle. The first petition concerned the timing of the brown crab fishery in area "O" and the impacts of the new red king crab fishery start date. The Board accepted that petition. The second petition related to the CDQ opilio season start date. The Board rejected that petition because there was no new information that had not been considered already.

The third petition was from Mundt/MacGregor taking issue with moving the red king crab start date and the stand-down provisions. The Board divided the petition into the two main issues and then rejected that part relating to the season change because no new information was provided. Regarding the stand-down, the Board decided to consult with the Council in late July, indicating that the State of Alaska will begin processing the stand-down for pot gear, but put on hold the trawl portion until after the consultation. Under attachment 4, you will find all the public comments received so far on this issue, plus the petitions submitted to the Board and a letter from Washington and Oregon. Most of this material you have seen before, but I thought it should be provided as we are not taking public testimony at this meeting. Attachment 5 is a summary of the plan.

The Board's rationale for its actions will be provided when available.

**Substitute Language for RECONSIDERATION OF Proposal # 355**

**5 AAC 35.053 (1) OPERATION OF OTHER [POT] GEAR**

(1) except as provided in (a) and (b) of this section, a person or vessel that operates commercial, subsistence, sport, or personal use pots, during the 14 days immediately before the opening of the commercial Tanner crab season in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J where the fishing with pots occurred, may not participate in the commercial Tanner crab fishery in the Tanner crab registration area, or with respect to Registration Area J, in that district, where fishing with pots occurred; a person or vessel that participates in a commercial Tanner crab fishery in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J, may not operate commercial, subsistence, sport or personal use pots in that registration area, or with respect to Registration Area J, in that district where fishing with pots occurred during the 14 days after the close of the commercial Tanner crab season; a vessel or person may operate other commercial pots in a Tanner crab registration area after putting crab pots in storage, as specified in 5 AAC 35.052, and unless the registration is already invalidated in 5 AAC 35.020(k), after invalidating the vessel's registration by contacting, in person, a local representative of the department:

(a) a person or vessel that operates commercial, subsistence, sport or personal use pots, or trawl gear in the Bering Sea District of Registration Area J, during the 30 days immediately before the opening of the commercial *C bairdi* Tanner crab season in that district, may not participate in the commercial *C bairdi* Tanner crab fishery in that district.

(b) a person or vessel that operates commercial, subsistence, sport or personal use pots, or trawl gear in the Bering Sea District of Registration Area J, during the 14 days immediately before the opening of the commercial *C. opilio* Tanner crab season in that district, may not participate in the commercial *C. opilio* Tanner crab fishery in that district.

(2) during a commercial Tanner crab fishery, a person or vessel may stop participating in the Tanner crab fishery and instead operate commercial pots other than Tanner crab pots, if the Tanner crab pots are put in storage as specified under 5 AAC 35.052, and the vessel owner or the owners agent contacts a department representative, in person and requests that the Tanner crab registration be invalidated.

**Proposal # 355 - 5 AAC 34.053. OPERATION OF OTHER POT GEAR, AND 5 AAC 35.053. OPERATION OF OTHER POT GEAR.** Amend these sections to provide the following:

A person or vessel that operates commercial, subsistence, personal use or sport fishing gears [POTS] in the 30 days immediately before the opening, or prior to registering for a commercial king or Tanner crab fishery in a crab registration area, may not participate in a commercial crab fishery in the crab registration area (where groundfish gear of any kind has been used).

Staff Reports: RC 4, tabs 1, 3, 4, 19 (Federal Requirements), 20 (FMP), 27, 30, & 34

Staff Comments: RC 4, tab 37, page 33

AC Reports: RC 110

Public Comments: RC 69, 85, 102 & 111

**Narrative of Pros and Cons:** This proposal would include any fishing gear to the 30 day no operation of pot gear before any king or Tanner crab fishery. There is a perceived problem of trawl vessels having an unfair advantage over crab fishers. The trawl vessels can use (misuse) pelagic gear in the pollock fishery up to the time to register for the crab fishery. Of the pollock trawl vessels participating in both fisheries, NMFS observer data does not indicate an increased bycatch of red king crab in October. The vessels under 125 feet would only have 30% groundfish observer coverage, therefore the opportunity for exploratory fishing is present. Trawl gear is an efficient crab survey method. However, fish ticket data does not show an increase in average catch of those vessels compared to similar length crab vessels. It was noted that the trawl vessels often have to enter the crab fishery with trawl equipment still in place on the deck and that would decrease efficiency. Trawlers were aware of this meeting and are not present. Change language to include only pot or trawl gear, (longline and jig gears are not to be included). Some felt that 30 days was too restrictive and a change of the red king crab season to October 15 would solve the problem. The department is neutral on this proposal.

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### ***POSITIONS & RECOMMENDATIONS***

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**Public Panel Recommendation:** Consensus - Support for pot and trawl gear, but not on 30 days, some want 14 days

**Board Committee Recommendation:** Support - for 30 days, and for pot and trawl gear

**Regulatory or Substitute Language:** See Attached

**Proposal # 291 - 5 AAC 34.8XX OPERATION OF OTHER POT GEAR IN REGISTRATION AREA T.** Extend the exclusion period when no pot gear could be fished from 14 days to 30 days prior to the opening of Bristol Bay (AREA T) commercial king crab fishing season as follows:

**5 AAC 34.8XX OPERATION OF OTHER POT GEAR IN REGISTRATION AREA T.** In Registration Area T, a person or vessel that operates commercial, subsistence, personal use, or sport pots during the 30 days immediately before the opening of a commercial king crab season in Registration Area T may not participate in the commercial king crab fishery in Registration Area T.

Staff Reports: RC4 (Tabs 1, 2, 13, 14, 17, 27, 28, 29)

Staff Comments: RC4 (Tab 37, page 19)

AC Reports: RC110

Public Comments: RC69, RC85, RC102, RC111

Narrative of Pros and Cons:

This proposal extends the exclusion period when no pot gear could be fished, in the Bristol Bay king crab management area, from 14 to 30 days. The Department proposed to close all of Area T except for a small section to allow for pot cod harvest.

The public that was in favor of this proposal was in consensus that all of Area T should be closed. The Department is neutral on this and had only proposed to leave open the small section of Area T after there had been concerns expressed about that area at an earlier industry meeting.

Concerns were expressed over excluding vessels that fish both the trawl fishery and the Bristol Bay red king crab fishery. There was discussion on whether vessels were considered economically dependent of the Bristol Bay red king crab fishery.

The segment of the public who were in favor of this proposal agreed that this should only pertain to the Bristol Bay king and Bering Sea Tanner crab fisheries. There was consensus to support proposal 291 with an amendment to include all the Area T and trawl gear. It was also decided to support proposal 355 with an amendment excluding Bering Sea crab fisheries. This would not pertain to jig or longline gear.

There was no public consensus on this matter and the Chairman requested all parties submit a short written summary for the record copy of their points for or against this proposal.

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***POSITIONS & RECOMMENDATIONS***

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**Public Panel Recommendation:**

no consensus

**Board Committee Recommendation:**

adopt as amended

**Regulatory or Substitute Language:**

See attached for proposal 291.

# North Pacific Fishery Management Council

TAB 2

Attachment 2

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director



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Anchorage, AK 99501-2252

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April 2, 1999

Dr. John White, Chairman  
Alaska Board of Fisheries  
P.O. Box 25526  
Juneau, AK 99802-5526

Dear Dr. White:

I am writing to request information with regard to certain crab fishery management actions taken by the Board at its recent meeting. Specifically, I have received several calls from fishing industry participants as well as Council members regarding the Board's action on proposals 287 (to change the start date of the king crab fishery) and proposals 291 and 355 (which extend the length of the exclusion period for pot fishing from 14 to 30 days, and include trawl gear in that exclusion). The Council has placed this issue on the agenda for their April meeting (week of April 19-25) and in preparation for that discussion, I would like to request a copy of the 'Board Findings' which summarize the Board's discussions and justifications for the actions on proposal 287, 291, and 355.

As you are aware, these actions have significant allocational effects, and there are concerns that these actions may be inconsistent with the provisions of that FMP. For example, while fishing seasons are a Category 2 measure, the FMP states that they are to be used to protect the mating and molting cycles of crab species. While the FMP recognizes other factors, such as to coordinate among fisheries or minimize cost to industry, these are to be done within biological constraints. Stand-down provisions do not explicitly appear in the FMP, and therefore would appear to come under the heading of 'other' action under Category 3, which requires consultation with the Council prior to adoption of the measure.

Because the Council will be interested in the underlying rationale used by the Board in their deliberations, I appreciate any information you can provide me to prepare for the Council's discussions.

Sincerely,



Clarence G. Pautzke  
Executive Director

cc: Rick Lauber  
Steve Pennoyer



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA D-2(a)(2)  
APRIL 1999

April 9, 1999

RECEIVED  
APR 12 1999  
N.P.F.M.C

Dr. John R. White  
Chairman, Board of Fisheries  
Alaska Department of Fish and Game  
Division of Administration  
Boards Support Section  
PO Box 25526  
Juneau, Ak 99802-5526

Dear Chairman <sup>John</sup> White:

We are reviewing the actions of the Board of Fisheries (Board) taken at its meeting on March 18-27, 1999, with respect to consistency with the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). We request the Board and Alaska Department of Fish and Game (ADF&G) to provide written explanations of the reasons for its decisions on the adopted proposals, as required by the Crab FMP under section 2.0, item 8. These written explanations will be instrumental in determining the course of action NMFS will take with respect to these measures.

Specifically, we request information on the following proposals:

- proposal 287, as adopted, to move the red king crab fishing season start date from November 1 to October 15;
- proposal 291, as adopted, to implement a 30-day exclusion period when no pot or trawl gear can be fished in Area T prior to the king crab fishing season in that area; and
- proposal 355, as adopted, to implement a 30-day exclusion period when no pot or trawl gear can be fished in Area J prior to the C. bairdi Tanner crab fishing season in that area and to include trawl gear in the 14-day exclusion period in this same area prior to the C. opilio Tanner crab fishing season.

To adequately address our concerns, the State's written explanation should provide:

1. The FMP provisions the Board relied on to adopt these measures;
2. the Board's findings that the measures are consistent with the applicable FMP provisions;
3. the Board's analysis of the types and numbers of vessels that would be affected by the measures and the economic impacts on these vessels;
4. whether the Board considered alternatives to accomplish the Board's purposes with less impact on the affected entities.



and the reasons for rejection of those alternatives.

We are especially interested in an explanation for the decision to include trawl gear in the exclusion periods prior to the red king crab and Tanner crab fisheries, including a discussion that shows:

1. The Board analyzed the impacts of these actions on trawl vessels;
2. the reasons why the Board adopted these measures despite testimony from ADF&G staff regarding the lack of evidence that "prospecting" actually occurs;
3. the rationale for completely precluding vessels from participating in the affected fisheries despite the probability that any advantage gained by prospecting would be dispelled shortly after the commencement of fishing;
4. the Board analyzed the cumulative impacts of the red king crab season change coupled with the exclusion period extension prior to the red king crab fishing season.

Sincerely,



Steven Pennoyer,  
Administrator, Alaska Region

cc: Richard Lauber, Chairman  
North Pacific Fishery Management Council

David Benton, Deputy Commissioner  
Alaska Department of Fish and Game



# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director

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April 24, 1999

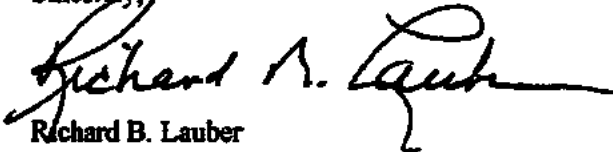
Dr. John White, Chairman  
Alaska Board of Fisheries  
P.O. Box 25526  
Juneau, AK 99802

Dear Dr. White:

During our meeting today Council members voted to request a joint meeting with the Alaska Board of Fisheries to discuss our mutual responsibilities under the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan, as well as concerns raised during public testimony regarding recent Board action on season start dates and stand-down provisions for Bering Sea crab.

We have asked our Executive Director Clarence Pautzke to contact Diane Cote to discuss scheduling the meeting.

Sincerely,



Richard B. Lauber  
Chairman

CLARENCE PAWZKE  
(1 PAGE)TAB 2  
Attachment 3

5/14/99

Board of Fisheries Review of  
Appeal #287, 291, 305 +  
8th, Teleconference - Seattle, WA

NAME	VESSEL / ORGANIZATION
1. Doni Thomson	A.C.C.
2. Jeff M. [unclear]	Royal Alaskan Seafoods
3. [unclear]	Ocean Olympic
4. Cary Swasand	Aleutian Spruce Fish
5. BRENT PAINK	UCB
6. John Wood	F/V American Eagle
7. Jerry Matson	F/V Handlet
8. LEIF NORDRO	F/V SCANDIA ROSE
9. Jon Casey	ATCG
10. Joe Sullivan	Munt Margregor
11. Ed Poulsen	F/V Arctic Sea
12. JOSTEIN KARLSEN	F/V ALEUTIAN NO. 1
13. Gordon FIVE	F/V Ocean Cape
14. George Walters	F/V North Pacific
15. Rick ALVAREZ	F/V ALASKAN BEAUTY
16. Joe Wabney	F/V ARCTIC EAGLE
17. [unclear]	PNCIAC



**State of Oregon**  
**DEPARTMENT OF FISH  
AND WILDLIFE**

Post Office Box 59  
Portland, Oregon 97207

May 12, 1999

Dr. John R. White  
Chairman, Board of Fisheries  
Alaska Department of Fish and Game  
Division of Administration  
Boards Support Section  
PO Box 25526  
Juneau, AK 99802-5526

**State of Washington**  
**DEPARTMENT OF FISH  
AND WILDLIFE**  
600 Capitol Way North  
Olympia, Washington 98501



**RECEIVED**  
MAY 24 1999  
N.P.F.M.C

The states of Oregon and Washington are concerned about several crab management proposals recently adopted by the Alaska Board of Fisheries during its meeting held on March 18-27, 1999. Specifically, these proposals are:

- Proposals 291 and 355 which amend 5 AAC 34.053, OPERATION OF OTHER POT GEAR, to extend the exclusion period when no pot gear can be fished from 14 to 30 days for the king crab and *C. bairdi* Tanner crab fishing season and include trawl gear in the exclusion period for the king crab and *C. bairdi* and *C. opilio* Tanner crab fishing seasons.
- Proposal 287 which amends 5 AAC 34.810, FISHING SEASONS FOR REGISTRATION AREA T., by moving the opening date for the Bristol Bay red king crab from November 1 to October 15.

These proposals may violate the procedural and substantive requirements of the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs. Pursuant to the Magnuson-Stevens Act, this FMP establishes a State of Alaska/Federal cooperative management regime that defers crab management to the State of Alaska with Federal oversight. Alaska regulations pertaining to the commercial King and Tanner crab fisheries in the BSAI are subject to the provisions of the FMP, including its goals and objectives; the Magnuson-Stevens Act's national standards; and other applicable Federal laws.

The procedural violation of the FMP's processes by the Board appears obvious. Proposals 291 and 355, the stand-down proposals, are management measures not specifically identified by the crab FMP. Section 8.3.8 of the FMP expressly provides "As previously noted, the State Government is not limited to only the management measures described in this FMP. However, implementation of other management measures not described in the FMP must be consistent with

the FMP, the Magnuson-Stevens Act, and other applicable Federal law, and may occur only after consultation with the council. This management measure provides for an expanded scope of federal review." It is undisputed that the Board adopted these proposals without consulting with the Council although it had at least two opportunities to do so.

Even more troubling are allegations of substantive violations of the FMP. We are concerned that the actions of the Board will de facto limit entry into the Red King crab fishery; cause economic loss through increased deadloss and reduced meat fill in; and cause increased gear conflict through overlapping of fixed gear (pot) and mobile gear (trawl) fishery seasons. We are looking forward to the Board's written explanation of its actions as set forth in the April 9, 1999 request from Steven Pennoyer, NMFS Alaska Regional Administrator.

The states of Oregon and Washington understand there is an allegation that the stand-down provisions are intended to undermine the recently amended License Limitation Program adopted by the Council. If the stand-down provisions are expressly or implicitly intended to limit units of effort in the crab fishery, the states of Oregon and Washington would find such action unacceptable. Implementation of limited access management measures are clearly within Category One. As such, limited access is specifically fixed by the FMP and require an FMP amendment to change.

These proposals may also violate the terms and spirit of the Joint Protocol between the North Pacific Fisheries Council and the Alaska Board of Fisheries on Management of Fisheries Off Alaska. As you are aware, the Council and Board created this protocol to achieve coordinate, compatible, and sustainable management of fisheries within each organization's jurisdiction in the Gulf of Alaska and the Bering Sea and Aleutians. The Joint Protocol provides that the Council and the Board will meet in Anchorage each February to consider management and regulation proposals, and any other issues of mutual concern. Proposals 291, 355, and 287 adopted by the Board of Fisheries are proposals which should have been discussed during this meeting established by the Joint Protocol. Had these proposals been considered at this meeting, the Council would have had the opportunity to express its legitimate concerns about these proposals. Unfortunately, the Board failed to bring these proposals to the Council's attention at this annual meeting.

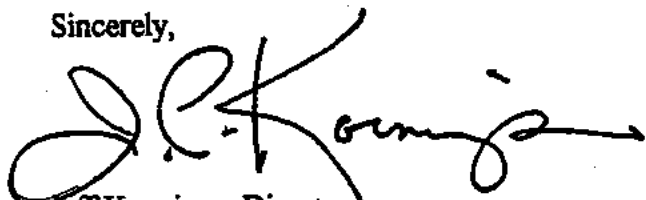
The Joint Protocol also created a Joint BOF/NPFMC Committee to further emphasize communications in a proactive manner. This committee met before your March meeting but failed to discuss your pending action although the subject of crab management and license limitation was specifically on the agenda. The minutes of this meeting note, however, that it was suggested that we try and reconcile a common objective and then pursue management options which might satisfy that objective for both the Council and BOF. The subsequent action of the BOF is not consistent with this proposal of the Joint Committee.

The states of Oregon and Washington understands that the State of Alaska and its Board of Fisheries may have been confused regarding their different obligations under the FMP and the Joint Protocol. The states of Oregon and Washington believe that the consultation which is required by the FMP may be initiated via the Joint Protocol meeting. The purpose of the

consultation is to avoid the Board adopting a rule which the Council determines to be inconsistent with the FMP. Obviously, this may occur as part of the Joint Protocol process. Indeed, the states of Oregon and Washington would be supportive in considering an amendment of the Crab FMP to reflect the Joint Protocol process, if it would assist the Board in understanding its procedural obligations.

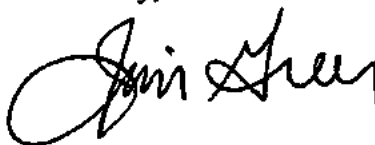
In the absence of such an amendment, however, the states of Oregon and Washington wish to reaffirm their commitment to the spirit and intent of the Joint Protocol and seek similar affirmation from the State of Alaska and the Board of Fisheries. In addition, we support the Council's request for a special joint BOF/NPFMC meeting to occur as soon as possible to fulfill the "consultation" obligation of the FMP where it would be our intent to fully discuss the recent actions of the BOF.

Sincerely,



Jeff Koenings, Director  
Washington Department of Fish and Wildlife

Sincerely,



Jim Greer, Director  
Oregon Department of Fish and Wildlife

ADA:ada

cc: Richard B. Lauber, Chair  
NPFMC

Steven Pennoyer, Administrator  
NMFS, Alaska Region

**MUNDT MACGREGOR** L.L.P.  
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May 21, 1999

Dr. John White  
c/o Ms. Diana Cote  
Executive Director  
Division of Boards  
Alaska Department of Fish  
and Game  
P.O. Box 25526  
Juneau, Alaska 99802-5526

SENT VIA FACSIMILE

Re: **Petition to Reconsider and Repeal Alaska Board of Fisheries  
Proposals Changing the Bristol Bay Red King Crab Season Start  
Date from November 1 to October 15 and Implementing 30-Day  
Trawler Stand-Downs Prior to the Crab Season (Proposals 287, 291,  
and 355)**

Dear Dr. White:

We are writing to inform you that we intend to appeal to the Crab Interim Action Committee ("CIAC") and the Secretary of Commerce (the "Secretary") the adoption of proposals 287, 291, and 355 by the Alaska Board of Fisheries (the "Board") pursuant to Chapter 9.0 of the Fishery Management Plan for Bering Sea/ Aleutian Islands King and Tanner Crabs, dated as of July 18, 1998 (the "Crab FMP").

Time is of the essence in this appeals process. We therefore reaffirm our previous document requests submitted to the Board and again request that the administrative record for the adoption of proposals 287, 291, and 355, along with our other document requests, be complied with as soon as possible. Any delay in receiving the relevant documents could seriously prejudice our pursuit of the appeal before the CIAC and the Secretary.

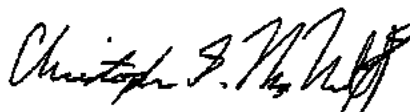
Dr. John White  
May 21, 1999  
Page 2

**MUNDT MACGREGOR LLP**  
ATTORNEYS AT LAW

We appreciate your prompt attention to this matter. Please do not hesitate to contact me with any questions.

Very truly yours,

MUNDT MacGREGOR L.L.P.

  
Christopher S. McNulty

CSM:cap  
CSM\LDK\WHITE-1425-00A

cc: Mr. Richard Lauber - via fax  
Mr. Steven Pennoyer - via fax  
NOAA General Counsel - via fax

# MUNDT MACGREGOR LLP

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John H. Chun  
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April 23, 1999

Dr. John White  
c/o Ms. Diana Cote  
Executive Director  
Division of Boards  
Alaska Department of Fish  
and Game  
P.O. Box 25526  
Juneau, Alaska 99802-5526

VIA FACSIMILE AND FED EX

Re: Petition to Reconsider and Repeal Alaska Board of Fisheries  
Proposals Changing the Bristol Bay Red King Crab Season Start  
Date from November 1 to October 15 and Implementing 30-Day  
Trawler Stand-Downs Prior to the Crab Season (Proposals 287, 291,  
and 355)

Dear Dr. White:

On behalf of Yukon Delta Fisheries Development Association ("YDFDA"),  
Golden Dawn, L.L.C. ("Golden Dawn"), Harold Jones, Rick Mezich, United Catcher  
Boats and its members ("UCB"), and Aleutian Spray Fisheries, Inc. ("Aleutian Spray"),  
we petition the Alaska Board of Fisheries (the "Board") to reconsider and repeal the  
following provisions of proposals adopted by the Board during its meeting held on  
March 18-27, 1999:

- proposal 287, as adopted, to move the red king crab fishing season  
start date from November 1 to October 15;
- proposal 291, as adopted, to implement a 30-day exclusion period  
when no trawl gear can be fished in Area T prior to the king crab  
fishing season in that area; and
- proposal 355, as adopted, to implement a 30-day exclusion period  
when no trawl gear can be fished in Area J prior to the C. bairdi  
Tanner crab fishing season in that area and to include trawl gear in the



14-day exclusion period in this same area prior to the C. opilio Tanner crab fishing season (collectively the "Proposals").

This petition is filed pursuant to Section 9 of the Fishery Management Plan for the Bering Sea/ Aleutian Islands King and Tanner Crabs, dated as of July 18, 1998 (the "Crab FMP") and AS 44.62.220, 5 AAC 39.998, and 5 AAC 96.625.

We petition the Board for reconsideration and repeal of proposal 287 and the trawl components of proposals 291 and 355 because each proposal violates the Crab FMP, the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. (the "Magnuson-Stevens Act"), including the Act's national standards, and other applicable federal laws. Thus, we specifically request that the Board repeal the entirety of the season start date proposal and the trawl components of the stand-down proposals.

### PETITIONERS

Petitioners, as a class, are owners or associations representing owners of combination vessels, which participate in both the North Pacific groundfish fisheries and the Bering Sea crab fisheries. Most of the Petitioners are pioneers of the crab and groundfish fisheries in the North Pacific. The Petitioners that own or operate combination vessels face drastic detrimental impacts on their traditional means of livelihood as a result of the passage of the Proposals. The primary impact of the Proposals will be to deny trawler/crabbers their historical eligibility to participate in both the Bering Sea crab and groundfish fisheries.

A total of approximately 42 combination vessels presently fish in both the groundfish and crab fisheries. Petitioners or their members operate most of these combination vessels. Each Petitioner is described in more detail below.

YDFDA is one of the community development quota groups, representing the villages of Emmonak, Kotlik, Alakanuk, and Pilot Point. A subsidiary of YDFDA operates one 78' combination trawler/crabber vessel, the LISA MARIE.

Golden Dawn is owned in part by a joint venture which is operated for the benefit of certain Western Alaska communities. Golden Dawn operates one 149' combination trawler/crabber vessel, the GOLDEN DAWN.

Harold Jones is a pioneer of the Bering Sea crab fisheries, operating crabbing vessels for over 30 years. Similarly, Mr. Jones has participated in the North Pacific groundfish fisheries for more than 20 years. Mr. Jones presently owns the combination trawler/crabber vessel, the MARCY J, which is fished out of Kodiak.

Rick Mezich is a member of the Alaska Crab Coalition and operates the combination trawler/crabber the FIERCE ALLEGIANCE.

UCB is an association of 63 catcher vessels, all of which trawl in the North Pacific and 28 of which also participate in the Bering Sea crab fisheries.

Aleutian Spray has operated crab vessels for approximately 25 years and operated those vessels as combination trawler/crabbers for the last 20 years. Aleutian Spray presently operates 5 combination trawler/crabbers.

### DOCUMENT REQUEST

Pursuant to section 2, item 8 of the Crab FMP, and the Public Records Act, Petitioners request that the Board produce all materials related to the Proposals, including without limitation, any findings (both draft and final), reports, submissions, overheads, handouts, transcripts, recordings, studies, and other petitions for reconsideration.

### BACKGROUND

Ron Briggs of the crab vessel the F/V TRAILBLAZER submitted Proposal 287, while Arni Thomson, the Executive Director of the Alaska Crab Coalition, submitted Proposal 355 to the Board. Proposals 287 and 355, along with proposal 291 as it was eventually adopted, were the result of a well-calculated effort by the proposal sponsors and their supporters (collectively, the "Sponsors"), who fish primarily for crab, to exclude Petitioners and other combination trawler/crabbers from participating in the Bering Sea crab fisheries. By pushing the Proposals through the Board in 1999, the Sponsors accomplished indirectly what they were unable to accomplish directly before the North Pacific Fishery Management Council (the "Council") in 1998.

In 1998, the Sponsors attempted to exclude combination trawler/crabbers from the Bering Sea crab fisheries by lobbying the Council for the passage of an amendment to the License Limitation Program (the "LLP"), which had been adopted by

the Council in 1995 but not yet implemented. The Sponsors offered a proposed amendment to the Council that included an additional landings requirement for eligibility under the LLP. The effect of the additional requirement would have been to exclude most of the combination trawler/crabbers from Bering Sea crab fisheries.

The Council heard extensive testimony on the exclusionary effect of the landings requirement amendment proposed by the Sponsors. After extensive deliberations, the Council rejected the proposed amendment, instead adopting a less stringent modification to the LLP, known as alternative 9, under which most combination vessels retained their crab fishery eligibility. Thus, the Council purposely acted to ensure the combination trawler/crabbers retained their historic eligibility to participate in both the crab and groundfish fisheries.

Undeterred by the Council's rejection of the Sponsors' proposed LLP amendment, the Sponsors promoted proposals 287 and 355, which, if allowed to stand, will have essentially the same effect as the rejected amendment. Despite the obvious effect of the proposals, the Sponsors intentionally misinformed the Board by stating that the proposals would benefit the fleet in general. See Attachment 1. Additionally, the proposals went so far as to state that "no one" and "no one [they were] aware of" was likely to suffer from the adoption of the proposals. *Id.* Also, despite the controversial nature of the proposals, there is no evidence in the record that the proposals were discussed in any of the joint sessions between the Board and the Council. The Board subsequently adopted the Proposals at their March 18-27, 1999 meeting, effectively conferring upon the Sponsors the exclusion of the combination trawler/crabbers they had sought from the Council and been denied.

The Proposals accomplish their sponsors' objective in the following manner. By moving the Bristol Bay red king crab season start date from November 1 to October 15, Proposal 287 will preclude combination trawler/crabbers from participating in both the crab and groundfish fisheries by creating an overlap between the fisheries. Similarly, proposals 291 and 355 will preclude combination trawler/crabbers from participating in both fisheries by establishing a 30-day stand-down for vessels that fish with trawl gear in Area T prior to the red king crab fishery and Area J prior to the C. bairdi Tanner crab fishing season. Proposal 355 additionally establishes a 14-day stand-down in Area J of the C. opilio Tanner crab fishery, which will exclude those vessels that trawl in the area prior to the season start date.

## ARGUMENT

The Crab FMP delegates authority to the Board to manage certain aspects of the Bering Sea/Aleutian Islands ("BS/AI") crab fisheries. As a part of this delegation of authority, any proposal adopted by the Board must comply with the objectives and standards set forth in the Crab FMP, the provisions of the Magnuson-Stevens Act, including the national standards, and other applicable federal law. See Crab FMP at 1. As will be demonstrated below, the season start date and stand-down proposals adopted by the Board violate each of these categories of law.

### **I. THE PROPOSALS VIOLATE THE OBJECTIVES AND STANDARDS SET FORTH IN THE CRAB FMP.**

The Proposals run afoul of the Crab FMP for numerous reasons. First, the Crab FMP establishes categories of management measures and different criteria for the adoption of management measures depending upon which category a measure falls within. The Proposals fail to satisfy the applicable criteria. Second, the Proposals were adopted in violation of the federal/state cooperative process established by the Crab FMP. Third, the exclusion of an entire segment of the crab fleet from the affected fisheries by the Proposals constitutes a violation of the overall goal, objectives, and underlying purpose of the delegation of authority from the Council to the Board contained in the Crab FMP.

#### **A. The Proposals Are Contrary To The Standards Of The Crab FMP Categories Under Which The Proposals Fall.**

The Crab FMP delegates management authority to the Board by using three categories of management measures:

- (1) Category 1 management measures are those that are fixed in the FMP and require a FMP amendment to change;
- (2) Category 2 management measures are those that are framework-type measures that the state can change following criteria set out in the FMP; and
- (3) Category 3 management measures are those that are neither rigidly specified nor frameworked in the FMP.

Crab FMP at 2. The Crab FMP also lists which management measures fall into which

category. Id. For example, limited access programs and legal gear requirements are category 1 measures, while fishing seasons and registration areas are category 2 measures, and gear placement and removal and reporting requirements are category 3. Id. Category 3 measures also include "other" management measures, defined as those measures not described in the FMP, which may be adopted by the Board provided they are consistent with the FMP, the Magnuson-Stevens Act, and other applicable federal laws, and may only be adopted after consultation with the Council. Id. at 4.

#### 1. Proposals 291 and 355

The stand-down proposals do not fit neatly within any of the three management categories described in the Crab FMP.<sup>1</sup> As has been illustrated above, however, the undeniable intent and potential effect of these provisions is to prevent an entire class of LLP eligible vessels from participating in both the Bering Sea crab and groundfish fisheries. As such, the stand-down proposals serve the same function as a limited access program, which is a category 1 management measure under the Crab FMP. Since category 1 measures may only be adopted by the Council via an amendment to the FMP, the stand-down proposals, as their functional equivalent, should be subjected to the same requirements. The elimination of the combination vessels is exactly what the Sponsors attempted but failed to achieve before the Council in 1998. These proposals are impermissible end runs around the process that established alternative 9. The proposals thus constitute an impermissible extension of the Board's authority and are in violation of the Crab FMP and alternative 9.

Even if proposals 291 and 355 are not considered impermissible manipulations of a category 1 measure, the proposals alternatively fall within the category 3 "other" management measures and must comply with the requirements of such measures. The Board may adopt category 3 "other" management measures only after consultation with the Council. Crab FMP at 4,

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<sup>1</sup> Some may argue that the stand-down proposals constitute "gear placement and removal" category 3 management measures. This argument is without merit. Even a cursory examination of the Crab FMP definition of this measure reveals it is strictly limited to the placement of unbaited gear on the fishing grounds before and after a crab season. Crab FMP at 41. It can in no way be read to include the stand-down proposals, which exclude an entire class of vessels from the crab fisheries over an extended period for the use of a certain type of gear in other fisheries.

24, 42. The Board did not consult with the Council prior to the adoption of the stand-down proposals. See Attachments 5 and 6. Thus, they do not meet the Crab FMP requirements and are invalid.

## 2. Proposal 287

Proposal 287 clearly falls within category 2 since it changes the start date for the Bristol Bay red king crab season from November 1 to October 15. As such, it must satisfy the criteria set forth in the Crab FMP for establishing season start dates contained in section 8.2.5 of the FMP. Crab FMP at 35. Proposal 287 fails to satisfy these criteria.

The Crab FMP requires that fishing seasons "be closed during sensitive biological periods to protect crab from mortality caused by handling and stress when shells are soft, and to maximize meat recovery by delaying harvest until the shells have filled out." Crab FMP at 3, 35. Statistical and testimonial evidence before the Board indicated that the highest yield of meat per crab occurs on or around November 1. See Attachment 2, Table 1. By moving the season start date from November 1 to October 15, proposal 287 deprives the fleet of the maximum yield, in violation of one of the primary objectives for the establishment of seasons.<sup>2</sup>

In addition to the loss of yield accompanying an earlier season start date, a majority of the other criteria set forth in the Crab FMP militate against the adoption of

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<sup>2</sup> The adage "those who ignore history are doomed to repeat it" appears particularly relevant in light of the Board's decision to adopt an earlier season start date for the Bristol Bay red king crab fishery. For example, in 1980, the season opened on September 10, 1980. Annual Westward Region Shellfish Report for 1980. On September 16, reports indicated that the fleet was experiencing low recovery and light crab. Id. By September 23, the crab processors actually petitioned the Governor of Alaska for the closure of the fishery due to the low yields. Id. The processors also began requiring the crab flee to sort crab on the grounds and refused to accept crab that were less than 70 percent full. Id. To address these sorts of difficulties, the Board adopted the November 1 season start date in 1990. The Annual Westward Region Shellfish Report for 1990 explains the rationale for the change as follows: "[t]his opening date was adopted by the Board during the spring when industry requested and supported a later opening for better quality and to bring the Tanner and king crab fisheries closer together in the Bering Sea." Id. at 200.

proposal 287. See Crab FMP at 36. Those criteria are:

- (1) the minimization of the amount of deadloss;
- (2) the production of the best quality product; and
- (3) the coordination of king and Tanner crab fisheries with other fisheries to spread out fishing effort, prevent gear saturation, and allow maximum participation in the fisheries by all elements of the crab fleets.

Id. (emphasis added).<sup>3</sup> First, warmer water temperature during an earlier start date will lead to higher deadloss of harvested crabs. See Attachment 3. This fact is confirmed by a comparison of the amount of deadloss from years with season start dates between August 1 and October 1, and years with season start dates of November 1, which shows a much greater deadloss throughout the period with earlier start dates. See Attachment 4. Second, as already discussed, a later start date leads to increased yield and better quality product. Third, the November 1 start date allows for better coordination with other fisheries and allows for participation in the fishery by all traditional elements of the crab fleets, while the October 15 start date will preclude the combination trawler/crabbers from participating in both the Bering Sea crab and groundfish fisheries, contrary to the LLP approved by the Council.

While there is a fair amount of quantitative evidence indicating an earlier start date is inconsistent with the Crab FMP criteria, there is little or no evidence of any potential benefits. In fact, the Board engaged in absolutely no quantitative analysis regarding proposal 287, further condemning its validity.

Proposal 287 also creates potential problems with gear conflict. FMP Management Objective 3 specifies that gear conflict should be minimized and specifically states that "seasons . . . may be arranged to eliminate, insofar as possible, conflicts between gear types and preemption of fishing grounds by one form of gear over another." Crab FMP at 21.

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<sup>3</sup> The Board has not produced findings regarding the adoption of proposal 287 or the other proposals for that matter. Thus, it is not possible to tell the Board's precise analysis of this issue. Nevertheless, a subcommittee of the Board did issue a narrative describing the "pros and cons" of the proposal. See Attachment 3.

By moving the opening date to October 15 and creating an overlap with the pollock fishery, gear conflict becomes a certainty. There is no indication the Board considered this issue. Moreover, there is no indication the Board considered the exacerbation of the gear conflict problem likely to be caused by the Steller sea lion "reasonable and prudent alternatives." The failure of the Board to address these gear conflict issues violates one of the fundamental objectives of the Crab FMP.

**B. The Adoption Of The Proposals Violated The Cooperative Process Demanded By The Crab FMP.**

The Crab FMP "establishes a State/Federal cooperative management regime that defers crab management to the State of Alaska with Federal oversight." Crab FMP at 1. To further this cooperative effort, the Crab FMP includes specific provisions intended to allow for regular communication and coordination between the state on the one hand, in the form of the Alaska Department of Fish & Game ("ADF&G"), and the federal government on the other, in the form of the Council, the National Marine Fisheries Service ("NMFS"), and NOAA General Counsel. See Crab FMP at 8, 43, 47-50. Thus, the Crab FMP requires that the Board involve representatives of the Council, NMFS, and NOAA General Counsel in the State's development of regulations, particularly to ensure compliance with federal law. *Id.* at 8, 43.

Contrary to these requirements, the record does not reflect that the Board initiated any discussions, or even mentioned the Proposals during at least three separate meetings between the Board and the Council. For example, a joint Board/Council meeting was convened for a full day in Anchorage on February 9, 1999, 5 weeks prior to the Board meeting. With you as Chair of this meeting, Proposals 287, 291, and 355 were not raised, even in concept. Also, on March 4, 1999, a joint committee of a subset of the Council and the Board met in Anchorage, yet the Board members in attendance again failed to mention the Proposals. Additionally, to the best of our knowledge, the Board also failed to consult with NMFS or NOAA General Counsel as to the consistency of the Proposals with federal law prior to their adoption. Consequently, adoption of the Proposals violated the established cooperative process required by the Crab FMP.

Moreover, the failure to follow the federal/state cooperative protocols deprived portions of the industry of the due process they rely on reflected in the Crab FMP. The failure to follow these protocols thus constitutes a violation of Crab FMP



Management Objective 6, requiring that "access to the regulatory process and opportunity for redress [be] available to interested parties." Crab FMP at 1, 22

**C. Precluding A Specific Group Of LLP Eligible Vessels From Participating In Both The Crab And Groundfish Fisheries Constitutes A Violation Of The Overall Goal, Objectives, And Underlying Purpose Of The Delegation Of Authority Contained In The Crab FMP.**

The season start date and stand-down proposals already have been established to be allocative in nature. While the allocative effect of a regulation is not itself a violation of the Crab FMP, the manner in which the Proposals allocate the affected fisheries, *i.e.*, precluding LLP eligible combination vessels from participating in both affected fisheries constitutes a violation of the Crab FMP in light of the FMP Management Goal, specific Management Objectives, and underlying purpose of the delegated authority.

First, the FMP Management Goal "is to maximize the overall long-term benefit to the nation of BS/ AI stocks of king and Tanner crabs by coordinated Federal and State Management, consistent with responsible stewardship for conservation of the crab resources and their habitats." Crab FMP at 1, 20. Adopting regulations in the guise of conservation measures that are actually designed to favor one group over another does not constitute "responsible stewardship" nor does it maximize the overall long-term benefit of the crab stocks for the nation as a whole.

Similarly, Management Objective 2 provides for the goal of the maximization of "economic and social benefits to the nation over time." Crab FMP at 1, 20. To ensure the fulfillment of this objective, the Crab FMP requires certain criteria to be considered, including the value of harvested crab and economic impacts on coastal communities. *Id.* at 20-21. The Crab FMP further requires this examination to be accomplished by considering the impact of management alternatives on current and future catch size, and their associated prices, harvesting costs, employment, distribution of benefits among members of harvesting, processing, and consumer communities, management costs, and other relevant factors. *Id.* at 21.

The Proposals fail to satisfy the requirements of Objective 2 for multiple reasons. For example, Proposal 287, by moving up the season start date, will decrease the meat fill and subsequent value of the crab. Additionally, there is absolutely no

discussion in the available record to indicate the Board considered the potential impact of the Proposals on coastal communities. These impacts stem from at least two sources. First, excluding combination vessels operated by Golden Dawn and a subsidiary of YDFDA will have negative impacts on the related coastal communities. Second, the decreased value of the crab harvest will result in losses of tax revenue to coastal communities. Additionally, the decreased harvest value will also cause losses in revenue to the crab industry in general, affecting both the crab fleet and crab processors. The Board has not engaged in an adequate analysis of any of the other impacts of the Proposals, nor has the Board considered alternatives that would address the same concerns as the Proposals in a less exclusionary manner.

Lastly, the underlying purpose of the delegation of authority from the Council to the Board contained in the Crab FMP was to ensure impartial management of the crab fisheries and not to allow discrimination against one sector of the fisheries in favor of another. Examples of the embodiment of this purpose may be found throughout the Crab FMP, e.g., the FMP itself establishes the most controversial measures, Crab FMP at 7; the FMP encourages non-discriminatory practices, *Id.* at 37; and the FMP encourages the participation of all sectors in the fishery and the avoidance of sudden economic dislocation. *Id.* at 36, 38. Thus, by effectively excluding a key sector of the king and Tanner crab fleet, the season start date and stand-down proposals breach the fundamental purpose of the Council's delegation of authority to the Board.

## **II. THE PROPOSALS VIOLATE THE PROVISIONS OF THE MAGNUSON-STEVENSON ACT, INCLUDING THE NATIONAL STANDARDS.**

For many of the same reasons highlighted above as well as additional reasons, the season start date and stand-down proposals violate at least five of the ten national standards contained in the Magnuson-Stevens Act as well as other provisions of the Act.

### **A. The Proposals Violate National Standards 2, 4, 5, 7, and 8.**

The Crab FMP specifically requires all regulations adopted by the Board to be consistent the ten national standards of the Magnuson-Stevens Act. Crab FMP at 1. And a regulation that is inconsistent with the national standards constitutes a violation of the Act. 16 U.S.C. § 1851.

**1. National Standard 2 - Best Scientific Information Available**

National standard 2 requires that "[c]onservation and management measures shall be based upon the best scientific information available." 16 U.S.C. § 1851. The Board's consideration of the Proposals violated this standard.

The best available scientific information reveals that moving the start date up will lead to increased deadloss, decreased yield, increased gear conflict, and the potential exclusion of a portion of the crab fleet. Each of these factors under the Crab FMP militates against moving the start date of the Bristol Bay red king crab fishery to earlier in the season under the Crab FMP. Additionally, the Board did not quantify or adequately analyze these factors. As a result, proposal 287 violates the best scientific information standard.

The stand-down proposals suffer from even greater deficiencies in regard to national standard 2. The only justification offered for the inclusion of trawl gear in proposals 291 and 355 is the potential for alleged "prospecting." The best scientific information available demonstrates that "prospecting" does not occur. See Attachment 4.

In its comments on proposal 355, ADF&G pointed to numerous facts that tended to show the absence of any "prospecting" by combination trawler/crabbers:

Analysis of the pollock trawl fishery in Area T since 1993 indicates that in years when the Area T red king crab fishery is open, up to 39 trawl vessels that fish for pollock in Area T during the month of October also participate in the red king crab fishery. Data collected by NMFS observers does not indicate that the bycatch of red king crabs is unusually high in the month of October. Due to NMFS bycatch reduction measures, the most productive red king crab grounds in Area T are typically closed to non-pelagic trawl gear prior to the time period addressed by this proposal. This bycatch reduction measure is likely a sever limitation on the vessel desiring to gain information regarding red king crab distribution through use of trawl gear. Additionally, catch records reveal that in years when the red king crab fishery in Area T is open, pollock trawl vessels that participate in that fishery do not have red king crab catches that are significantly different than the remainder of the

fleet. . . .

Attachment 7. See also Attachment 8.<sup>4</sup>

Even though all available evidence indicates that "prospecting" with trawl gear does not occur, the Board adopted the stand-down proposals. Such action clearly constitutes a violation of the best evidence requirements of national standard 2.

## 2. National Standard 4 - Fair and Equitable Allocations

National standard 4 provides that:

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. Fishermen, such allocation shall be: (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

16 U.S.C. § 1851. An allocation of fishing privileges constitutes any "direct and deliberative distribution of opportunity to participate in a fishery among identifiable, discrete user groups." 50 CFR § 600.325(c). Allocations of fishing privileges include "different fishing seasons for recreational and commercial fishermen" and "assignment of ocean areas to different gear users." Id.

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<sup>4</sup> A Board subcommittee compiled a narrative of "pros and cons" regarding proposal 355, which cited to absolutely no evidence that "prospecting" was actually occurring. See Attachment 9. The subcommittee also acknowledged that NMFS observer data did not indicate an increased bycatch of red king crab in October and that fish ticket data did not show an increase in average catch of combination trawler/crabbers compared to similar-length crab-only vessels. Id. Additionally, the Board failed to note that the Council has closed the bottom trawl pollock fishery and under the related NMFS performance standards it is therefore illegal for a pollock trawler to have onboard 20 or more crab of any species at any time. Under this management regime, "prospecting" would subject a vessel to a stiff penalties under the Magnuson-Stevens Act.

The season start date and stand-down proposals are allocations of fishing privileges. Thus, the Proposals must comply with national standard 4, which requires that such management measures comply with and discuss the three factors enumerated in the standard. See 50 CFR § 600.325. The Board failed to perform the requisite analysis. The Board has failed to address the fairness and equity of the exclusion of the combination trawler/crabbers by the Proposals, including "mak[ing] an initial estimate of the relative benefits and hardships imposed by the allocation, and compar[ing] its consequences with those of alternative allocation schemes, including the status quo." 50 CFR § 600.325(c)(3)(i)(B). Similarly, the Board failed to adequately address whether the Proposals promote conservation, including whether the Proposals optimize the yield of the affected fisheries. See 50 CFR § 600.325(c)(3)(ii). The Board also failed to adequately address whether the exclusion of a defined portion of the crab fleet leads to the acquiring of an excessive share of fishing privileges by particular individuals, as well as a host of other factors, including dependence on the fishery by present participants and coastal communities. See 50 CFR § 600.325(c)(3)(iii)-(iv).

In light of the failure of the Board to adequately address any of these factors, the Proposals plainly violate national standard 4.

### 3. National Standard 5 - Efficiency

National standard 5 states that "[c]onservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose." 16 U.S.C. § 1851. Each of the Proposals breach national standard 5

The breach of the standard by the stand-down proposals is especially egregious because there is absolutely no evidence that the activity purported to justify the stand-down—"prospecting"—occurs. As a result, proposals 291 and 355 violate the admonition of national standard 5 that no measure shall have economic allocation as its sole purpose.

Any increased gain from an earlier start date appears to be offset by increased deadloss and decreased yield. Thus, proposal 287, like proposals 291 and 355, simply "redistribute[s] gains and burdens without an increase in efficiency" in violation of national standard 5. 50 CFR § 600.330(b)(2)(i).

4. **National Standard 7 - Costs and Benefits**

National standard 7 states that "[c]onservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." 18 U.S.C § 1851. A key component of national standard 7, also embodied in other national standards, is a requirement that management measures be analyzed to determine if the benefits of the measures outweigh the costs. 50 CFR § 600.340(d). Specifically, "in determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated." *Id.* As already demonstrated, the Board has failed to engage in such an analysis regarding the three proposals, resulting in the violation of national standard 7.

5. **National Standard 8 -- Communities**

National standard 8 provides that:

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

16 U.S.C. § 1851.

As previously discussed in section I.C. above, a number of Western Alaska coastal communities depend upon the combination trawler/crabbers LISA MARIE and GOLDEN DAWN for a portion of their CDQ revenues. The exclusion of these vessels from the affected fisheries could have detrimental impacts upon these communities, as could the loss in tax revenue arising from the decreased value of the crab harvest. Despite these potential impacts, the Board utterly failed to analyze this aspect of the Proposals, resulting in an indisputable violation of national standard 8.

**B. The Stand-Down Proposals Constitute An Impermissible Extension Of Board Jurisdiction Over Federally Managed Groundfish Fisheries In Violation Of The Magnuson-Stevens Act.**

Section 306 of the Magnuson-Stevens Act, 16 U.S.C. § 1856, governs the delegation of authority to states via fishery management plans and indicates that the state may not receive more authority than is delegated via a given fishery management plan. Here, under the Crab FMP, the Council delegated certain managerial authority regarding the BS/AI crab fisheries to the State of Alaska. Such a delegation of authority did not include the authority to govern vessels or individuals participating in groundfish fisheries in the North Pacific.

Despite the limited nature of the Board's authority under the Crab FMP, the stand-down proposals affect the ability of the combination vessels to participate in the groundfish fisheries. Such proposals exceed the permissible scope of the Board's authority and violate section 306 of the Magnuson-Stevens Act as well as the Crab FMP.

**III. THE PROPOSALS ALSO VIOLATE OTHER APPLICABLE FEDERAL LAW INCLUDING THE NATIONAL ENVIRONMENTAL POLICY ACT, THE REGULATORY FLEXIBILITY ACT, AND THE EQUAL PROTECTION CLAUSES.**

The Crab FMP also requires any proposal adopted by the Board to comply with other applicable federal law in addition to the Magnuson-Stevens Act. Crab FMP at 1. Thus, the Crab FMP indicates that although the Board is a division of a state agency, it is required to follow applicable federal substantive and procedural law since the Board is managing fisheries conducted in federal waters via a federal delegation of authority. The adoption of the Proposals violated several such laws, including without limitation, the National Environmental Policy Act, 42 U.S.C. § 4321, et seq. ("NEPA"), the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq. (the "RFA"), and the equal protection clauses of the U.S. Constitution.

**A. The Proposals Violate NEPA.**

When a major federal action is at stake, NEPA requires that an Environmental Assessment ("EA") be conducted to determine the potential impacts of such action on the quality of the human environment. The Proposals, adopted pursuant to the federal Crab FMP and governing federal waters, constitute major federal action.

Thus, under NEPA, the Board should have conducted an EA of the Proposals potential impacts prior to adoption. As has been discussed extensively above, the Board has engaged in no such detailed analysis.

**B. The Proposals Violate The RFA.**

The primary purpose of the RFA is to relieve small entities from burdensome regulatory requirements. To this end, the RFA requires agencies to conduct an analysis to determine whether proposed regulations will have a significant economic impact on a substantial number of small entities. Here, as explained above, the Proposals are likely to have extremely significant economic impacts on a number of small businesses and associations through the denial of the historical eligibility of these entities to participate in both the Bering Sea crab and groundfish fisheries. Despite these obvious impacts, the Board has failed to conduct any analysis under the RFA. See also Executive Order 12866 of 1993 (requiring agencies to perform a cost/benefit analysis to achieve the purpose of the RFA).

**C. The Proposals Violate The Equal Protection Clauses Of The U.S. Constitution.**

The equal protection clauses of the U.S. Constitution require that economic regulations, such as the Proposals, be grounded in a rational basis when drawing distinctions between different defined groups. Although this standard of review is fairly minimal, the above discussions demonstrate that neither the season start date nor the stand-down proposals have a rational basis for their adoption. Thus, the Proposals violate the equal protection clauses.<sup>5</sup>

**CONCLUSION**

For the foregoing reasons, Petitioners respectfully request the Board to reconsider and repeal the season start date proposal in its entirety (proposal 287) and the trawl components of the stand-down proposals (proposals 291 and 355) adopted at

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<sup>5</sup> For the same reasons, the Proposals also appear to violate the equal protection clause of the Alaska Constitution.



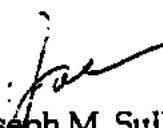
John White  
April 23, 1999  
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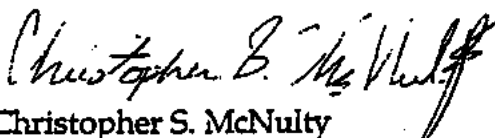
MUNDT MACGREGOR LLP

its March 1999 meeting.<sup>6</sup>

Very truly yours,

MUNDT MacGREGOR L.L.P.

  
Joseph M. Sullivan  
Alaska Bar # 9901002

  
Christopher S. McNulty

**Attachments**

cc: Mr. Richard Lauber (w/ attachments)  
Mr. Steven Pennoyer (w/ attachments)  
NOAA General Counsel (w/ attachments)

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<sup>6</sup> Pursuant to AS 16.05.251(c) and AS 44.62.230, Petitioners request that if the Board denies this petition, it provide Petitioners with a detailed, written explanation of the Board's denial.

**PROPOSAL 287 - 5 AAC 34.810. FISHING SEASONS FOR REGISTRATION AREA T.**

1

Amend this regulation to provide the following:

October <sup>15<sup>th</sup></sup> ~~10<sup>th</sup>~~ opening for Bristol Bay red king crab.

**PROBLEM:** Bristol Bay red king crab season. Move opening date from November 1<sup>st</sup> to October 10<sup>th</sup>. This would help the entire industry by having the Bristol Bay season closer to the St. Matthew and Pribilof seasons.

**WHAT WILL HAPPEN IF NOTHING IS DONE?** Higher start-up costs for the entire industry. Weather concerns are also a factor.

**WHO IS LIKELY TO BENEFIT?** Entire fleet, processors and businesses.

**WHO IS LIKELY TO SUFFER?** No one.

**OTHER SOLUTIONS CONSIDERED?**

**PROPOSED BY:** Ron Briggs, F/V Trailblazer

(HQ-98-F-059)

\*\*\*\*\*

**FAVOR**

**OPPOSE**

PC37 - PNCLAC

AMENDED TO October 15<sup>th</sup>

PASSING 5 Yes, 1 No, on web, March 24<sup>th</sup>

**FINAL ACTION:** Carries Fails Tabled No Action See Prop. # \_\_\_\_\_

ABSENT \_\_\_\_\_ ABSTAIN \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_ TAPE # \_\_\_\_\_

**PROPOSAL 355** - 5 AAC 34.053. OPERATION OF OTHER POT GEAR., and 5 AAC 35.053. OPERATION OF OTHER POT GEAR. Amend these sections to provide the following:

A person or vessel that operates commercial, subsistence, personal use or sport fishing gears [POTS] in the 30 days immediately before the opening, or prior to registering for a commercial king or tanner crab fishery in a crab registration area, may not participate in a commercial crab fishery in the crab registration area (where groundfish gear of any kind has been used).

**PROBLEM:** Fair start policy, king and tanner crab fisheries in the Bering Sea crab registration areas.

**WHAT WILL HAPPEN IF NOTHING IS DONE?** Groundfish vessels using other than pot gear can operate in a crab registration area up to the time of tank inspection, while vessels using pot gear cannot fish within 14 days of seasoning openings.

**WHO IS LIKELY TO BENEFIT?** The fleet in general will benefit from the improvement in the fair start policy.

**WHO IS LIKELY TO SUFFER?** No one we are aware of at this time.

**OTHER SOLUTIONS CONSIDERED?** The current regulation prohibiting the use of pot gear within 14 days of a crab season was inherited to deter "prospecting" and to promote a fair start. Other groundfish gears should be included in the regulation.

**PROPOSED BY:** Arni Thomson

(HQ-98-F-131)

\*\*\*\*\*

**FAVOR**

**OPPOSE**

*Passes 6 yrs, 0 NO*

*on Weds, March 24, 99*

**FINAL ACTION:** Carries \_\_\_\_\_ Fails \_\_\_\_\_ Tabled \_\_\_\_\_ No Action \_\_\_\_\_ See Prop. # \_\_\_\_\_

**ABSENT** \_\_\_\_\_ **ABSTAIN** \_\_\_\_\_

**DATE** \_\_\_\_\_ **TIME** \_\_\_\_\_ **TAPE #** \_\_\_\_\_

2

**BRISTOL BAY RED KING CRAB FISHERY, 1998  
REPORT TO THE ALASKA BOARD OF FISHERIES**

by

**Rance Morrison**

**Regional Information Report<sup>1</sup> No. 4K99-10**

**Alaska Department of Fish and Game  
Division of Commercial Fisheries  
P.O. Box 920587  
Dutch Harbor, Alaska 99692**

**February 1999**

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<sup>1</sup>Regional Information Report Series was established in 1987 to provide an information access system for all unpublished division reports. These reports frequently serve diverse ad hoc informational purposes or archive basic uninterpreted data. To accommodate timely reporting of recently collected information, reports in this series undergo only limited internal review and may contain preliminary data; this information may be subsequently finalized and published in the formal literature. Consequently, these reports should not be cited without prior approval of the author or the Division of Commercial Fisheries.

Table 1. Bristol Bay, Area T of the Bering Sea, commercial red king crab catch statistics, 1966-1998.

Year	Number of		Crab <sup>a</sup>	Harvest <sup>a</sup> (pounds)	Pots Pulled	Average		CPUE <sup>b</sup>	% Old Shell	Deadloss (pounds)	
	Vessels	Landings				Weight (pounds)	Length (mm)				
1966	9	15	140,554	997,321	2,720	7.1		52			
1967	20	61	397,307	3,102,443	10,621	7.8		37			
1968	59	261	1,278,592	8,686,546	47,496	6.8		27			
1969	65	377	1,749,022	10,403,283	98,426	5.9		18			
1970	51	309	1,682,591	8,559,178	96,658	5.1		17			
1971	52	394	2,404,681	12,955,776	118,522	5.4		20			
1972	64	611	3,994,356	21,744,924	205,045	5.4		19			
1973	67	441	4,825,963	26,913,636	194,095	5.6		25			
1974	104	605	7,710,317	42,266,274	212,915	5.5		36		N/A	
1975	102	592	8,745,294	51,326,259	205,096	5.7		43		N/A	
1976	141	984	10,603,367	63,919,728	321,010	6.0	148	33	27.4	1,639,483	
1977	130	1,020	11,733,101	69,967,868	451,273	5.9	148	26	13.0	875,327	
1978	162	926	14,745,709	87,618,320	406,165	5.9	147	36	6.9	730,279	
1979	236	889	16,808,605	107,828,057	315,226	6.4	152	53	10.4	1,273,037	
1980	236	1,251	20,845,350	129,948,463	567,292	6.2	151	37	11.0	3,555,891	
1981	177	1,026	5,307,947	33,591,368	542,250	6.3	151	10	47.4	1,858,668	
1982	90	255	541,006	3,001,210	141,656	5.5	145	4	24.6	711,289	
1983			NO COMMERCIAL FISHERY								95,834
1984	89	137	794,040	4,182,406	112,556	5.2	142	7	26.5	35,601	
1985	128	130	796,181	4,174,953	85,003	5.2	142	9	25.8	6,436	
1986	159	230	2,099,576	11,393,934	178,370	5.4	142	12	25.5	284,127	
1987	236	311	2,122,402	12,289,067	220,871	5.8	145	10	19.0	120,388	
1988	200	201	1,236,131	7,387,795	153,004	6.0	147	8	15.1	23,537	
1989	211	287	1,684,706	10,264,791	208,684	6.1	148	8	17.7	81,334	

-Continued-

last yr. Sept

COMMITTEE E - Bristol Bay King Crab

RC # 142

Board Committee Members:

- 1. Dan Coffey \* Chair
- 2. Virgil Umphenour \* had to attend other committee part way through
- 3. Russell Nelson

Alaska Department of Fish and Game Staff Members:

- 1. Rance Morrison
- 2. Doug Pengilly
- 3. Gordon Kruse
- 4. Jie Zheng
- 5. Donn Tracy
- 6. Pete Probasco
- 7. Forrest Bowers
- 8. Notes: Holly Moore

Fish & Game Advisory Committee Members:

- 1. Garry Loncon - PNCAC

Public Panel Members:

- 2. Tom Casey
- 3. Jeff Stephan
- 4. Kevin Kaldestad
- 5. Lief Nordbo
- 6. Linda Kozak
- 7. Lennie Herzoy
- 8. Bill LeBow
- 9. Arnie Thompson
- 10. Gerry Merrigan
- 11. Steve Toomey
- 12. Dave Jentry
- 13. Lu Dochterman
- 14. Gordon Bleu
- 15. Ron Briggs
- 16. Ed Poulsen
- 17. Brent Paine
- 18. Bob Scofield

Technical Advisor

- 1. Dr. Bob Otto

*Pete Coast:*  
*of many letters*  
*2010 et al.*  
*5:20 Coast*  
*30 day also Post*

Proposals before the committee were 285, 286, 287, 288, 289, 291

The meeting began at ~ 0930 hrs in the Resolution Room of the Captain Cook Hotel and concluded at ~ 1530 hrs with a half hour lunch break.

Proposal # 287 - **5 AAC 34.810. FISHING SEASONS FOR REGISTRATION AREA T.**  
Amend this regulation to provide the following:

October 10<sup>th</sup> opening for Bristol Bay red king crab.

Staff Reports: RC4 (Tabs 1, 2, 13, 14, 17, 27, 28, 29)

Staff Comments: RC4 (Tab 37, page 11)

AC Reports: RC110

Public Comments: RC69, RC85, RC102, RC111

Narrative of Pros and Cons:

This proposal seeks to move the opening date of the Bristol Bay red king crab fishery from November 1 to October 10. This will move the opening closer to the Pribilof and St. Matthew fisheries in the Bering Sea. The goal of this proposal is to reduce down time between season and eliminate the cost of mobilizing vessel and processing crews for the Bristol Bay season. This proposal would not impact the department's ability to manage this fishery.

The proposer suggested moving opening date to October 15. There was lengthy discussion on whether to move the start to the 10 or the 15 of October. There was consensus from all but one member of the public to move the date to the 15.

The following were points against the proposal:

1. warmer water temperature causing higher deadloss of harvested crabs
2. market issue, crabs having less meatfill then if the fishery were to commence on November 1
3. fishermen participating in the Bering Sea Korean hair crab fishery would be unable to participate in the Bristol Bay red king crab fishery
4. trawl vessels which have fished in this area will now be excluded from the fishery

The following were points for the proposal:

1. eliminating trawl vessels from 'crossing over' to the Bristol Bay red king crab fishery from the pollock fishery
2. better weather in October could allow for a safer fishery.
3. extra time for vessel maintenance after the season and before the start of Bering Sea *C. opilio* fishery.
4. less down time between the Pribilof/St. Matthew and Bristol Bay red king crab fisheries which in turn would save the fleet and processors money

Discussions included all of the above. It was determined that the Department would work with the Bering Sea Korean hair crab fishers to eliminate the conflict of their fishery with the Bristol Bay red king crab fishery if this proposal were adopted.

One member of the committee representing trawl catcher vessels expressed concern that this proposal will exclude vessels that have historically fished in the Bristol Bay red king crab fishery

after the trawl season. He stated that this would be the case regardless if date was set for the 10 or the 15 of October because the trawl fleet fishes through the end of October.

---

***POSITIONS & RECOMMENDATIONS***

---

**Public Panel Recommendation:**

Consensus from all but one member representing trawl fishers on moving the opening date to October.

Consensus from all but one member on moving the opening date to October 15.

**Board Committee Recommendation:**

Move opening date to October 15

**Regulatory or Substitute Language:**

see attached





UCB Comments on March 1999

Board of Fish Action to:

*Change Bristol Bay Red King Crab*

*Season Start Date*

*from November 1 to October 15*

*and Implement 30 Day Trawler*

*Stand-down Prior to Crab Season*

Board of Fish March 1999 Action to:  
*Exclude Combination Trawler/Crabbers  
From Crab Fisheries*

- was well calculated
- proposed by Alaska Crab Coalition
- knowingly excluded NPFMC
- circumvented established NPFMC/NMFS due process with BOF
- excluded industry who relied upon joint BOF/NPFMC due process
- is contrary to NPFMC decision on crab LLP eligibility (Alternative 9)
- was based in part on false information from proposals submitted by ACC

(Attachment 4 p. 2)

**Board of Fish March 1999 Action on**  
***Proposal #287 to Move Back the Bristol Bay Red***  
***King Crab Season Start Date:***

- will exclude pollock trawlers who also fish red king crab by creating a seasonal overlap
- will cause harvest of red king crab at less than maximum meat yield
- will result in increased crab dead loss
- will result in losses of revenue to crab processors and community tax bases as well as to combination trawler/crabbers
- is inconsistent with MFCMA, NPFMC crab FMP and BOF regulations

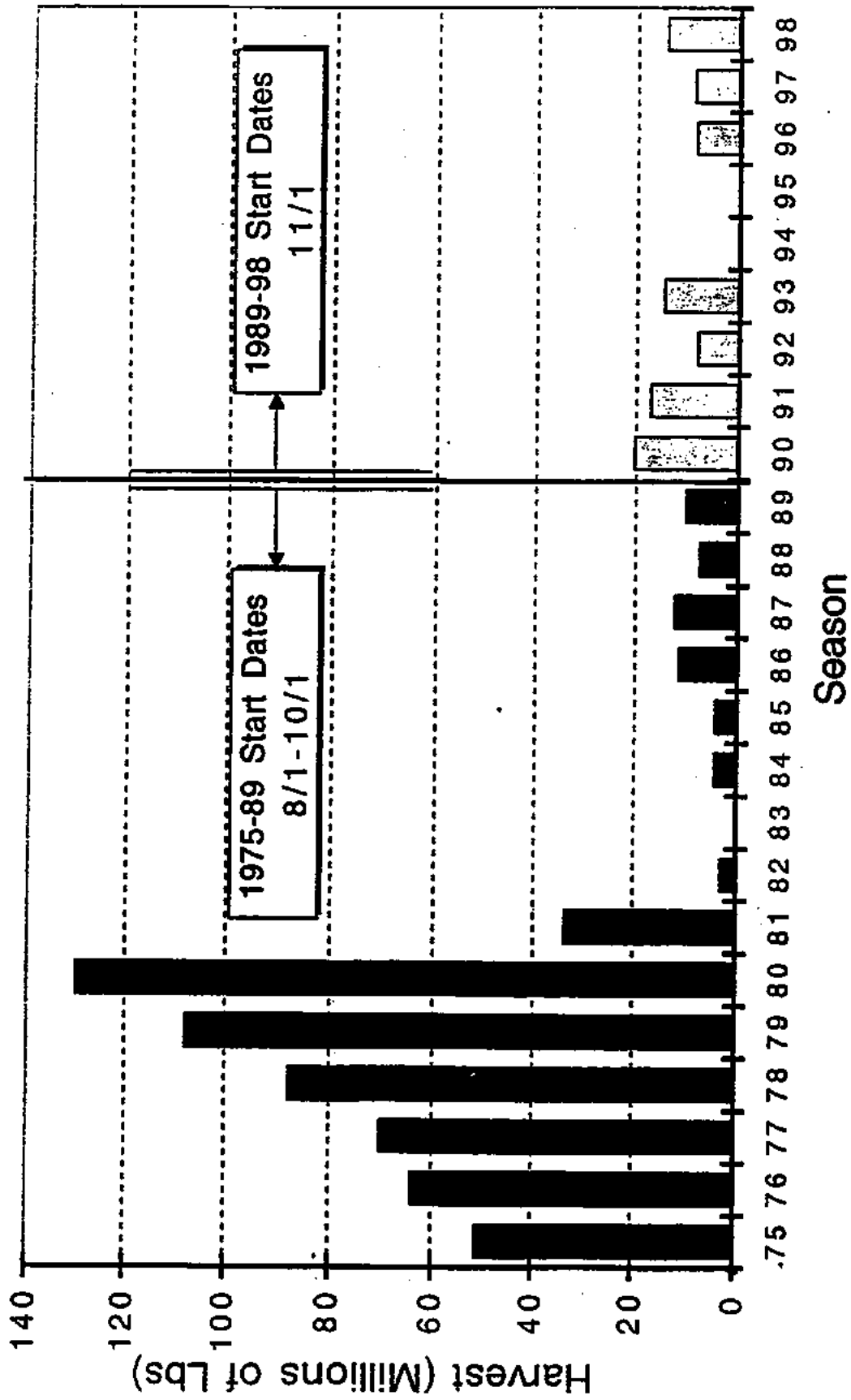
(Attachment - 4 p. 3)

**Board of Fish March 1999 Action on**  
***Proposal #291 to Implement a 30 Day Exclusion on***  
***Trawlers from Fishing Bristol Bay Red King Crab:***

- will exclude pollock trawlers from the Bristol Bay red king crab fishery due to a 30 day stand-down
- is founded upon the BOF's apparent belief that combination trawler/crabbers fishing Bering Sea pollock are prospecting for red king crab
- is total nonsense
- has no factual basis of support
- facts show the contrary is true
- is outside BOF authority

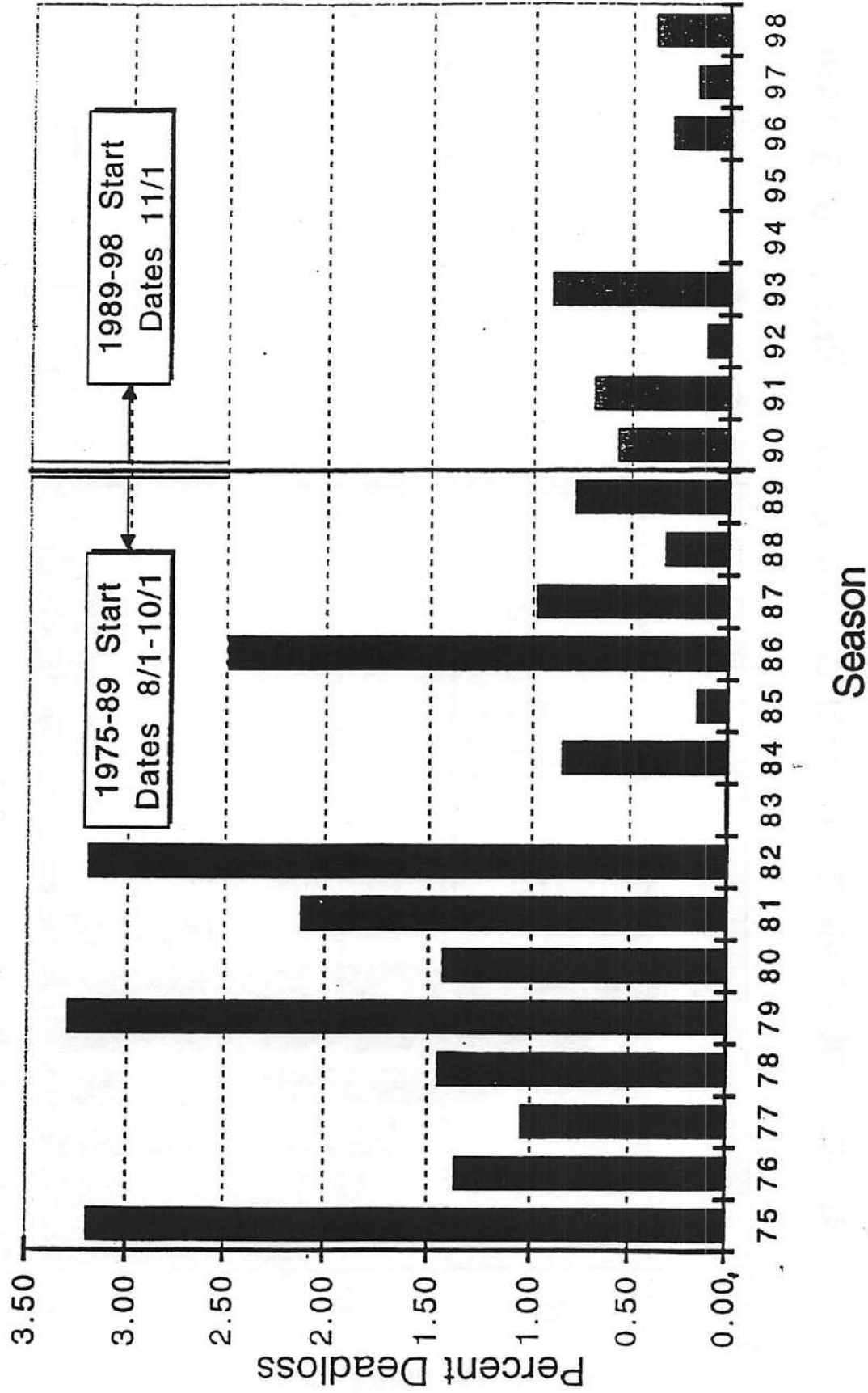
(Attachment 4, p. 4)

# Total harvest (millions of lbs) of Bristol Bay RKC, 1975-1998.



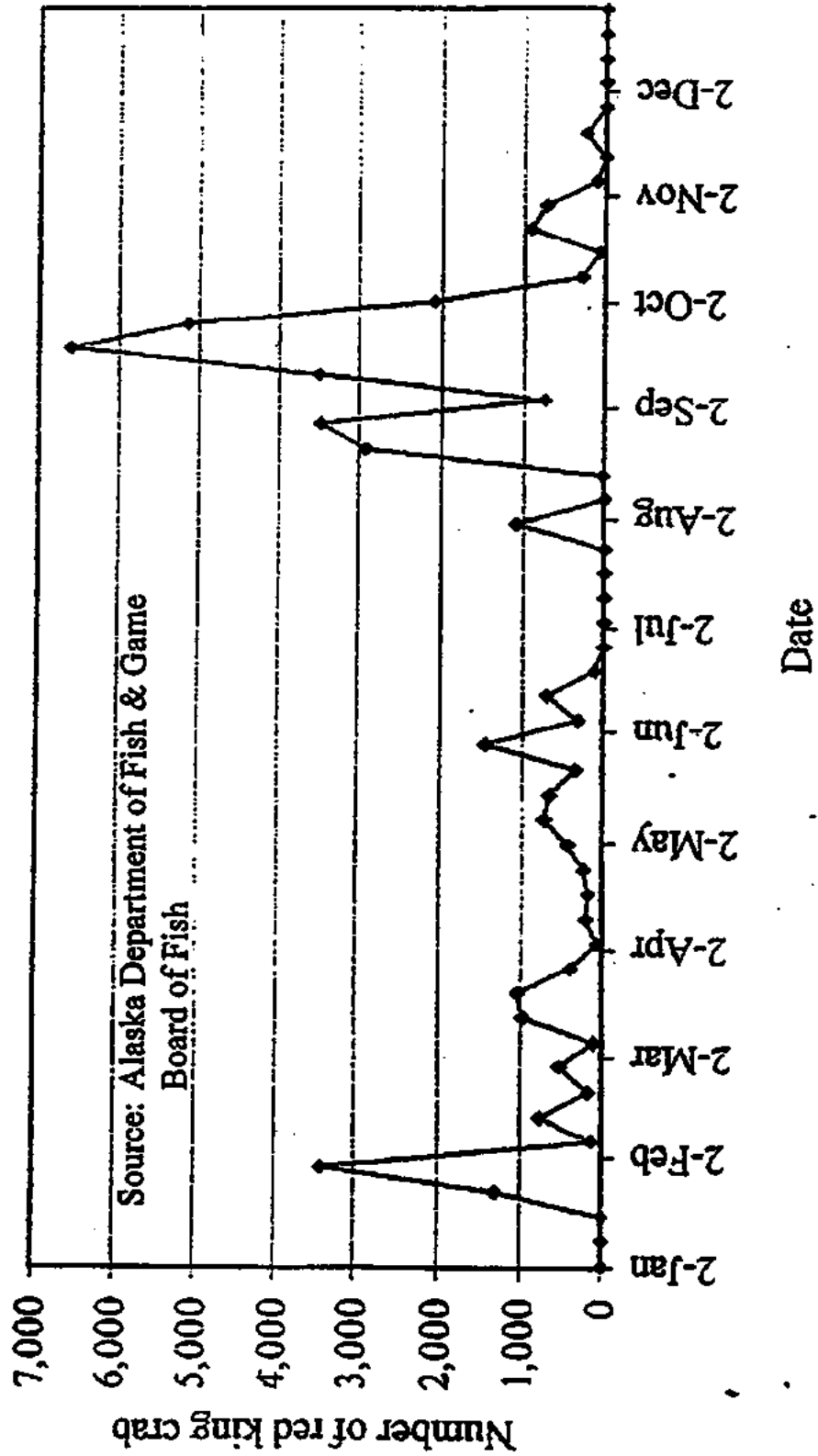
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Total percent deadloss from harvest of Bristol Bay RKC, 1975-1998.



(Attachment 4, p. 6)

Red king crab by catch in selected BS/AI trawl fisheries, 1993, 1996-1998.



**Fishery performance of cross over trawl vessels in Area T red king crab fishery, 1993, 1996-1997.**

**Source: Alaska Department of Fish & Game, Board of Fish**

(Attachment 4, p. 8)

<b>YEAR</b>	<b>RED KING CRAB VESSELS REGISTERED</b>	<b>TRAWL VESSELS REGISTERED FOR RED KING CRAB</b>	<b>FLEET AVERAGE RED KING CRAB CATCH</b>	<b>AVERAGE RED KING CRAB CATCH FOR TRAWL VESSELS</b>
<b>1993</b>	<b>292</b>	<b>18</b>	<b>50,098</b>	<b>45,364</b>
<b>1996</b>	<b>196</b>	<b>8</b>	<b>42,886</b>	<b>43,309</b>
<b>1997</b>	<b>256</b>	<b>39</b>	<b>34,205</b>	<b>33,620</b>



Cumulative Zone 1 Red King Crab Bycatch (# of crab) in Bering Sea Pollock, Atka Mackerel, and Other Fisheries Category, 1997 and 1998. Source: NMFS Alaska Region

1998 Bering Sea Pollock B Season (# of Red King Crab)

<u>Week Ending Date</u>	<u>Cumulative</u>	<u>Crabs per Week</u>
08/15/98	1,384	-
08/22/98	1,805	421
08/29/98	1,805	0
09/05/98	1,839	34
09/12/98	1,839	0
09/19/98	7,416	5,577
09/26/98	12,051	4,635
10/03/98	13,473	1,422
10/10/98	13,004	-469
10/17/98	12,828	-176
10/31/98	13,409	581

1997 Bering Sea Pollock B Season (# of Red King Crab)

<u>Week Ending Date</u>	<u>Cumulative</u>	<u>Crabs per Week</u>
08/09/97	137	-
08/16/97	137	0
08/23/97	137	0
09/06/97	137	0
09/13/97	137	0
09/20/97	137	0
09/27/97	137	0
10/04/97	137	0
10/11/97	137	0
10/18/97	137	0
10/25/97	137	0
11/01/97	137	0

5

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director



ESTIMATED TIME  
2 HOURS

DATE: April 9, 1999

SUBJECT: BSAI Crab Management

**ACTION REQUIRED**

- (a) Review recent Board of Fisheries actions on crab seasons and stand-down requirements.
- (b) Initial review of Bering Sea Tanner crab rebuilding plan.

**BACKGROUND**

Recent Board of Fisheries Actions

At its March 1999 meeting the Board of Fisheries took a number of management actions for the crab fishery. These actions included adoption of several proposals that affect vessels fishing for both groundfish and crab. Proposal 287 (as adopted) moves the red king crab fishing season start date from November 1 to October 15a. Proposals 291 and 355 (as adopted), extend the exclusion period when no pot gear can be fished from 14 to 30 days for the king crab and *C. bairdi* Tanner crab fishing season and include trawl gear in the exclusion period for the king crab and *C. bairdi* and *C. opilio* Tanner crab fishing seasons. The proposals are under item D-2(a)(1).

Both NMFS and I have written to the Board seeking justification for the changes (item D-2(a)(2)). It is my view that the crab FMP allows the Board to change the crab season as a category 2 measure that is at the discretion of the State, but needs justification. Once a decision is made on changing seasons, there is an appeals procedure available in the plan to persons not pleased with the change.

The stand-down for trawlers (as well as for pot fishermen), however, is a more difficult situation, and somewhat confounded in the plan. Stand-downs were not contemplated in the original drafting of the plan, and therefore fall under section 8.3.8 "Other" which states:

"As previously noted, the State government is not limited to only the management measures described in this FMP. However, implementation of other management measures not described in the FMP must be consistent with the FMP, the Magnuson-Stevens Act, and other applicable Federal law, and may occur only after consultation with the Council. This management measure provides for an expanded scope of Federal review. Other management measures that the State may wish to implement are subject to the review and appeals procedures described in Chapters 9 and 10 of this FMP."

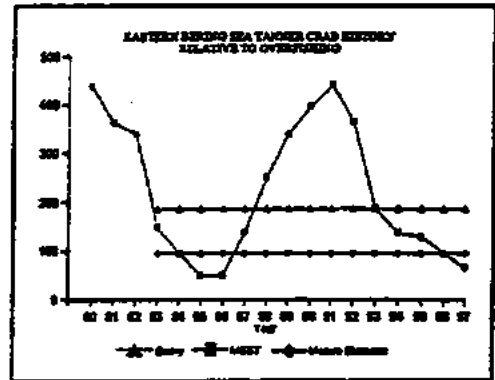
Therefore, stand-downs need to be brought to the Council for consultation before implementation. It should be noted that the placement of "Other" under Category 3 measures (discretion of State) is confusing. Nonetheless,

the FMP is clear in requiring any measure not described in the FMP to be the subject of consultation. This is in the introduction to chapter 8 and reiterated in section 8.3.8 (see item D-2(a)(3)). The Council should consider the proposed stand-down and any background material or justification received from the State and determine its next course of action.

### Tanner Crab Rebuilding Plan

The Bering Sea Tanner crab (*C. bairdi*) stock was declared "overfished" on March 3, 1999, because the 1997 *C. bairdi* spawning biomass (64.2 million pounds) was below MSST (94.8 million pounds of biomass; see adjacent figure). The stock has continued to decline 1998, with spawning biomass estimated to be 36.9 million pounds.

Section 304 of the Magnuson-Stevens Act requires that a rebuilding plan be developed within one year of an overfishing determination. The national standard guidelines further require a rebuilding period less than 10 years unless dictated otherwise by life history characteristics.



A rebuilding plan has been drafted and analyzed; the executive summary is provided as Item D-2(b)(1). At this meeting, the Council is scheduled to make an initial review of the analysis.

# North Pacific Fishery Management Council

6

605 West 4th Avenue, Suite 308  
Anchorage, AK 99501-2252

Fac (907) 271-2817



Visit our website: <http://www.npfmc.gov/npfmc>

Telephone (907) 271-2809

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director

April 2, 1999

Dr. John White, Chairman  
Alaska Board of Fisheries  
P.O. Box 25526  
Juneau, AK 99802-5526

Dear Dr. White:

I am writing to request information with regard to certain crab fishery management actions taken by the Board at its recent meeting. Specifically, I have received several calls from fishing industry participants as well as Council members regarding the Board's action on proposals 287 (to change the start date of the king crab fishery) and proposals 291 and 355 (which extend the length of the exclusion period for pot fishing from 14 to 30 days, and include trawl gear in that exclusion). The Council has placed this issue on the agenda for their April meeting (week of April 19-25) and in preparation for that discussion, I would like to request a copy of the Board 'Findings' which summarize the Board's discussions and justifications for the actions on proposal 287, 291, and 355.

As you are aware, these actions have significant allocational effects, and there are concerns that these actions may be inconsistent with the provisions of that FMP. For example, while fishing seasons are a Category 2 measure, the FMP states that they are to be used to protect the mating and molting cycles of crab species. While the FMP recognizes other factors, such as to coordinate among fisheries or minimize cost to industry, these are to be done within biological constraints. Stand-down provisions do not explicitly appear in the FMP, and therefore would appear to come under the heading of 'other' action under Category 3, which requires consultation with the Council prior to adoption of the measure.

Because the Council will be interested in the underlying rationale used by the Board in their deliberations, I appreciate any information you can provide me to prepare for the Council's discussions.

Sincerely,

Clarence G. Pautzke  
Executive Director

cc: Rick Lauber  
Steve Remoyer

7

**ALASKA DEPARTMENT OF FISH AND GAME**

**STAFF COMMENTS ON WESTWARD REGION KING AND TANNER  
CRAB AND STATEWIDE REGULATORY PROPOSALS  
ALASKA BOARD OF FISHERIES MEETING  
ANCHORAGE, MARCH 18 - MARCH 30, 1999**



These staff comments were prepared by the Alaska Department of Fish and Game for use at the king and Tanner crab meeting, scheduled for March 18 - March 30, 1999, in Anchorage, Alaska. The comments are designed to assist the public and board. The stated staff positions should be considered preliminary and subject to change, as new information becomes available. Final staff positions will be formulated after review of written and oral public testimony presented to the Board of Fisheries.

(Attachment 7 p. 1)

force trawl vessels to limit their fishing activities to either king crab or pollock, but not both. Approval of this proposal is not expected to result in additional direct cost for a private person to participate in this fishery.

**PROPOSAL 355 (PAGE 274) 5 AAC 34.053. OPERATION OF OTHER POT GEAR and 35.053. OPERATION OF OTHER POT GEAR.**

**WHAT WILL THE PROPOSAL DO?** This proposal would prohibit any person or vessel that operates any type of groundfish fishing gear in a king or Tanner crab registration area in the Bering Sea, during the 30 days prior to the commercial king or Tanner crab fishery in that registration area, from participating in the commercial king or Tanner crab fishery in that registration area. This proposal also establishes a 30 day waiting period from when a person or vessel last operates any type of groundfish fishing gear in a Bering Sea registration area to when they could register for and participate in the commercial king or Tanner crab fishery in a Bering Sea registration area.

**WHAT ARE THE CURRENT REGULATIONS?** Current regulations restrict a vessel which operates any type of pot gear in a king or Tanner crab registration area within the 14 days prior to the commercial king or Tanner crab season, from participating in the commercial king or Tanner crab fishery in that registration area. Vessels fishing other types of gear are not restricted from operating gear prior to a commercial king or Tanner crab season.

**WHAT WILL BE THE EFFECT IF THE PROPOSAL IS ADOPTED?** A person or vessel wishing to participate in a commercial king or Tanner crab fishery could not operate any type of groundfish fishing gear in that area for the 30 days prior to the commercial king or Tanner crab fishery in that registration area.

**BACKGROUND:** Some pot fishermen believe groundfish vessels fishing gear other than pots (trawls, hook and line, etc.) are gaining king and Tanner crab distribution information in the days leading up to the opening of the commercial king and Tanner crab seasons. Current regulations do not prevent a vessel from operating trawl or hook and line gear right up to the opening of a commercial king or Tanner crab season in that registration area.

**DEPARTMENT COMMENTS:** Analysis of the pollock trawl fishery in Area T since 1993 indicates that in years when the Area T red king crab fishery is open, up to ~~20% of the vessels that fish for pollock in Area T during the~~ ~~month of October also participate in the red king crab fishery.~~ Data collected by NMFS observers does not indicate that the bycatch of red king crabs is unusually high in the month of October. Due to NMFS bycatch reduction measures, the most productive red king crab grounds in Area T are typically closed to non-pelagic trawl gear prior to the time period addressed by this proposal. This bycatch reduction measure is likely a severe limitation on the vessel desiring to gain information regarding red king crab distribution through use of trawl gear. Additionally, catch records reveal that in years when the red king crab fishery in Area T is open, pollock trawl vessels that participate in that fishery do not have red king crab catches that are significantly different than the remainder of the fleet. In years when the pollock "C Season" is open during the month of October, proposals 354 and 355 could force trawl vessels to limit their fishing activities to either king crab or pollock, but not both. Approval of this proposal is not expected to result in additional direct cost for a private person to participate in this fishery. Approval of this proposal is not expected to result in additional direct cost for a private person to participate in this fishery.

**PROPOSAL 356 (PAGE 275) 5 AAC 34.031. LANDING REQUIREMENTS; and 5 AAC 35.031. TANNER CRAB LANDING REQUIREMENTS**

**WHAT WILL THE PROPOSAL DO?** Catcher-processor vessels would not be required to carry an onboard observer when transporting processed king (or Tanner crab) when transiting out of Alaska waters to an out of state delivery port after the closure of a registration area, if the vessel met the criteria outlined in the proposal.

**WHAT ARE THE CURRENT REGULATIONS?** After 24 hours following the closure of a king (or Tanner) crab registration area, a king (or Tanner crab) vessel registered for that area may not have king (or Tanner) crab on board while it is in waters subject to the jurisdiction of the state; unless, if the king (or Tanner) crab are processed, no more than 90 days have passed since the closure of the registration area or district, and the vessel is carrying a department approved onboard observer for the entire 90-day period.

**WHAT WILL BE THE EFFECT IF THE PROPOSAL IS ADOPTED?** Catcher-processor vessels would not be required to carry a department approved onboard observer when transporting processed king or Tanner crab between ports after the closure of a registration area.

8

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**DIVISION OF COMMERCIAL FISHERIES**

**DELIBERATION MATERIALS**

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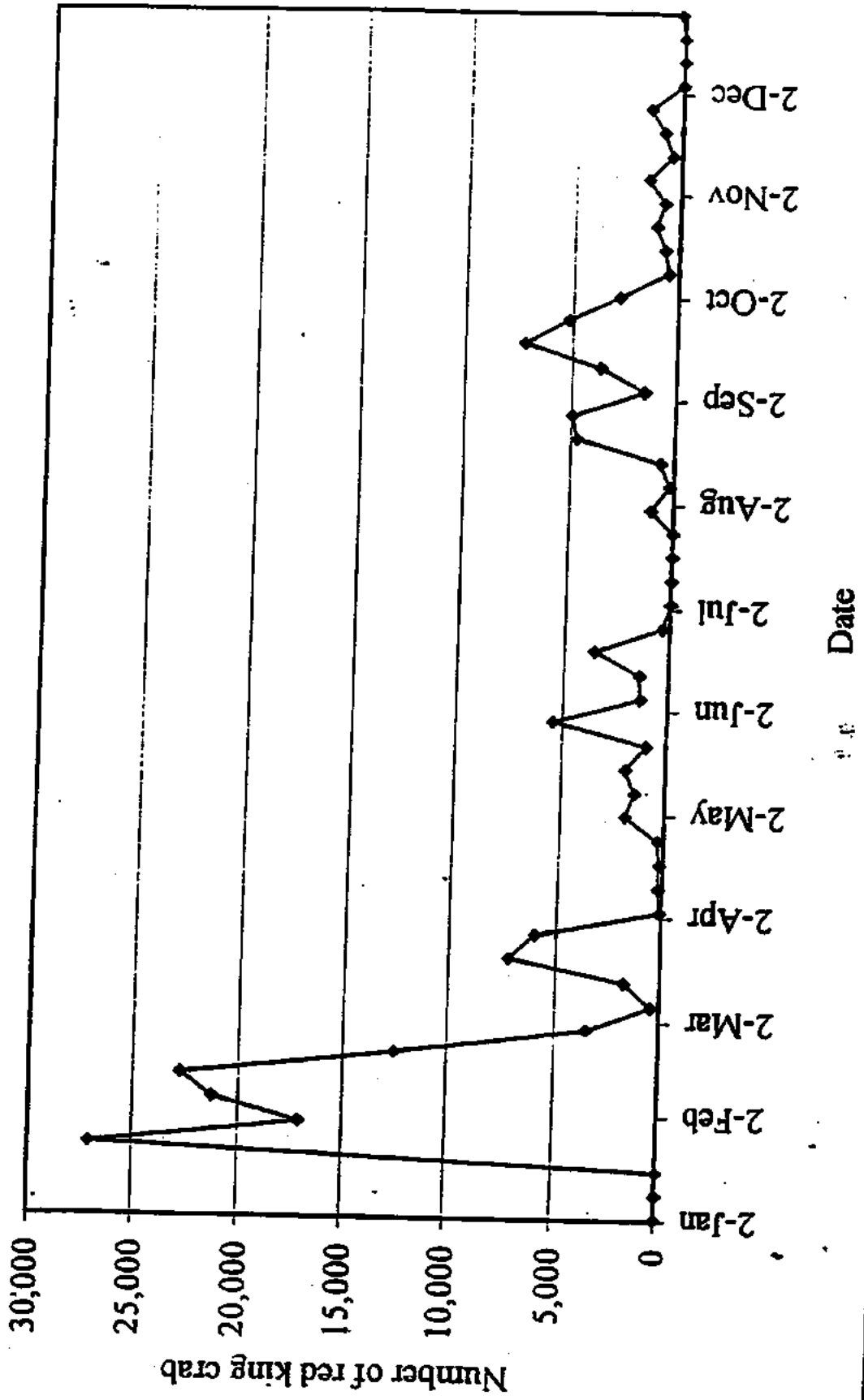
**King and Tanner Crab**

**March 1999**

**Alaska Department of Fish and Game  
Division of Commercial Fisheries  
211 Mission Road  
Kodiak, Ak., 99615**

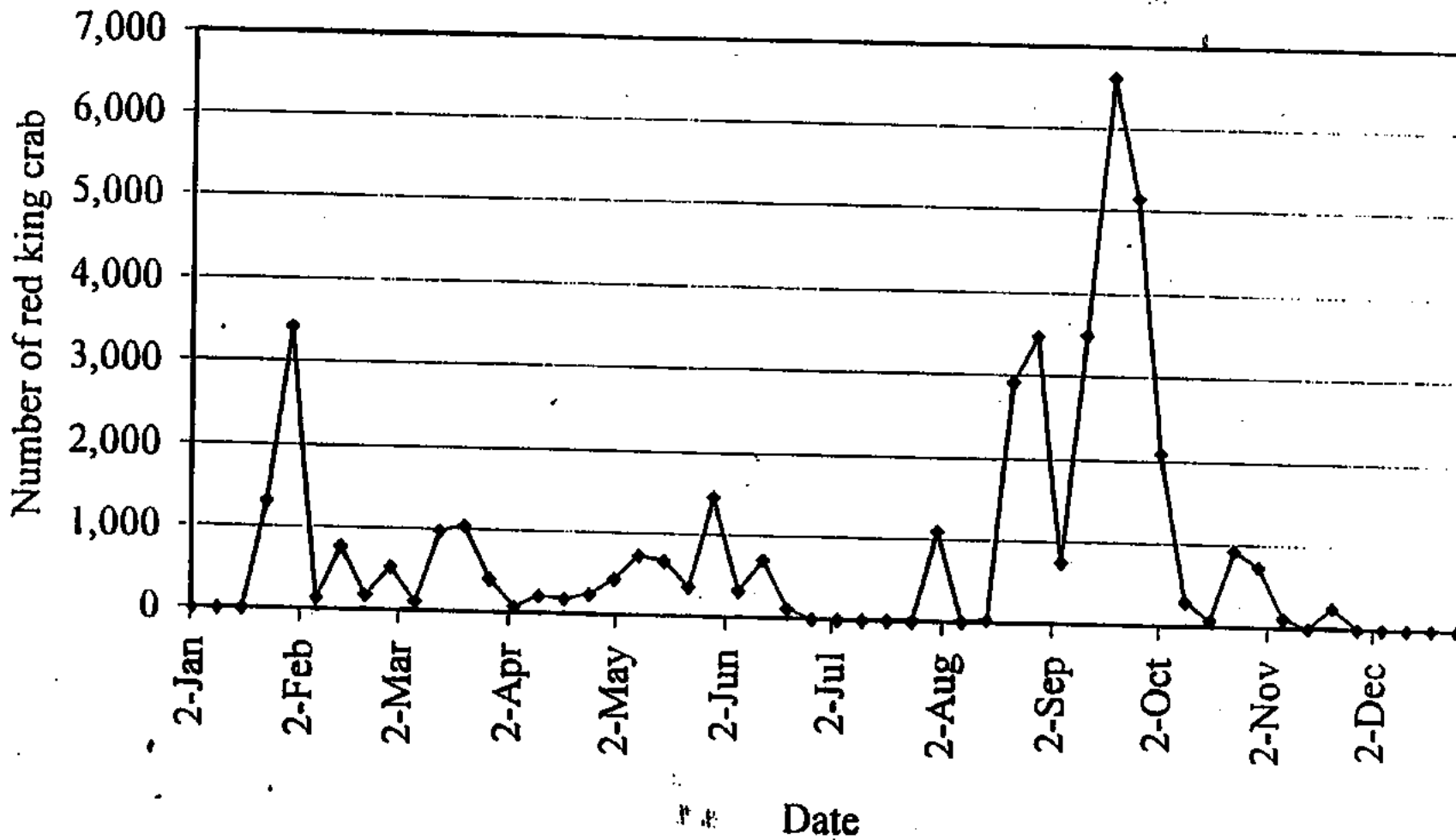
( A 11 1 0 1 )

Red king crab by-catch in selected BS/AI trawl fisheries, 1993-1998.





Red king crab by catch in selected BS/AI trawl fisheries, 1993, 1996-1998.



Fishery performance of cross over trawl vessels in Area T red king crab fishery, 1993, 1996-1997.

YEAR	RED KING CRAB VESSELS REGISTERED	TRAWL VESSELS REGISTERED FOR RED KING CRAB	FLEET AVERAGE RED KING CRAB CATCH	AVERAGE RED KING CRAB CATCH FOR TRAWL VESSELS	DIFFERENCE	SIGNIFICANT
1993	292	18	50,098	45,364	-4,734	Yes, Z=1.86, P=0.06
1996	196	8	42,886	43,309	423	No, Z=0.22, P=0.83
1997	256	39	34,205	33,620	-585	No, Z=0.166, P=0.87

**COMMITTEE D – Bering Sea/Aleutian Islands King Crab**

**RC135**

**Board Committee Members:**

- 1. Ed Dersham \* Chair
- 2. Dan Coffey

**Alaska Department of Fish and Game Staff Members:**

- 1. Rance Morrison
- 2. Wayne Donaldson
- 3. Forrest Bowers
- 4. Andy Hoffman
- 5. Notes: Skip Gish

**Fish & Game Advisory Committee Members:**

- 1. Gary Loncon - PNCIAC

**Public Panel Members:**

- 1. Jeff Stephan
- 2. Lu Dochtermann
- 3. Linda Kozak
- 4. Steve Hall
- 5. Doug Wells
- 6. Tom Casey
- 7. Mary McBurney
- 8. Leif Nordbo
- 9. David Wilson
- 10. Gary Stewart
- 11. Kevin Kaldestadt
- 12. Arni Thompson
- 13. Lenni Herzog
- 14. Steve Toomey

Proposals before the committee were: 290, 292, 293, 294, 295, 296, 297, 309, 310, 353, 354, 355, 357, 358, 359, 393, and ACR27

Proceedings were held at the Captain Cook Hotel, Endeavor Room, on March 21, 1999 from 4:38 p.m. to 7:19 p.m.

COMMITTEE D REPORT  
TO FULL BOARD

**Proposal # 355 - 5 AAC 34.053. OPERATION OF OTHER POT GEAR, AND 5 AAC 35.053. OPERATION OF OTHER POT GEAR.** Amend these sections to provide the following:

A person or vessel that operates commercial, subsistence, personal use or sport fishing gears [POTS] in the 30 days immediately before the opening, or prior to registering for a commercial king or Tanner crab fishery in a crab registration area, may not participate in a commercial crab fishery in the crab registration area (where groundfish gear of any kind has been used).

Staff Reports: RC 4, tabs 1, 3, 4, 19 (Federal Requirements), 20 (FMP), 27, 30, & 34

Staff Comments: RC 4, tab 37, page 33

AC Reports: RC 110

Public Comments: RC 69, 85, 102 & 111

**Narrative of Pros and Cons:** This proposal would include any fishing gear to the 30 day no operation of pot gear before any king or Tanner crab fishery. There is a perceived problem of trawl vessels having an unfair advantage over crab fishers. The trawl vessels can use (misuse) pelagic gear in the pollock fishery up to the time to register for the crab fishery. Of the pollock trawl vessels participating in both fisheries, NMFS observer data does not indicate an increased bycatch of red king crab in October. The vessels under 125 feet would only have 30% groundfish observer coverage, therefore the opportunity for exploratory fishing is present. Trawl gear is an efficient crab survey method. However, fish ticket data does not show an increase in average catch of those vessels compared to similar length crab vessels. It was noted that the trawl vessels often have to enter the crab fishery with trawl equipment still in place on the deck and that would decrease efficiency. Trawlers were aware of this meeting and are not present. Change language to include only pot or trawl gear, (longline and jig gears are not to be included). Some felt that 30 days was too restrictive and a change of the red king crab season to October 15 would solve the problem. The department is neutral on this proposal.

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**POSITIONS & RECOMMENDATIONS**

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**Public Panel Recommendation:** Consensus - Support for pot and trawl gear, but not on 30 days, some want 14 days

**Board Committee Recommendation:** Support - for 30 days, and for pot and trawl gear

**Regulatory or Substitute Language:** See Attached

10

**ALASKA CRAB COALITION**

3901 Leary N.W. Suite #6  
Seattle, Washington 98107  
206 547 7560  
206 547 0130 fax  
acc-crabak@msn.com

May 13, 1999

Dr. John White, Chair  
C/o Ms. Diana Cote  
Executive Director  
Alaska Board of Fisheries  
P.O. Box 25526  
Juneau, Alaska 99802-5526

RE: Petition dated April 23, 1999 to Repeal Alaska Board of Fisheries Decisions Changing the Bristol Bay Red King Crab Season Start Date and Implementing 14 and 30 Day Stand-Downs Prior to the Opening of Crab Seasons (Proposals 287, 291, and 355).

Dear Dr. White:

At this time the Alaska Crab Coalition (ACC) wishes to respond to the above petition submitted by Mr. Joe Sullivan of Mundt MacGregor, but only to the allegations that are both inappropriate to the administrative proceeding and evidently intended to inflame the controversy and thus to obscure the legal issues. A separate ACC comment is being developed that is confined to the record before the Board at the time it approved the Proposals, to appropriate additional evidence, and to analysis of the applicable law.

In their background statement, the "petitioners", comprised primarily of United Catcher Boats and its members, are accusing the Alaska Crab Coalition, Ron Briggs and others, (collectively, the "Sponsors") of "a well-calculated effort" of excluding the Bering Sea pollock trawlers from the Bering Sea crab fisheries. The petitioners go so far as to accuse the Board of having exceeded its authority and for having ignored the law and the best scientific evidence in deliberations upon, and adoption of, Proposals 287, 291 and 355.

In addition, on the same day the petitioners filed this appeal, they were making an all-out effort at the NPFMC, where the Board actions were being reviewed, to begin the process of taking management of the crab fisheries away from the State of Alaska and placing it under federal jurisdiction. This followed circumvention of the Council and the State by lobbying Congress for the enactment of the American Fisheries Act.

The petitioners allegations of a calculated effort call for a few references to the actual Board of Fisheries and NPFMC process.

**CRAB PLAN TEAM ROLE:**

The Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (FMP) authorizes a Crab Plan Team composed of scientists and managers from the State, the NPFMC and the NMFS. The Team is authorized to review and make recommendations on matters of crab fisheries science, research and management to the Council and the Board. During 1998 the Team met on several occasions to deal with a major revision of the FMP, that had to be completed for the MSFCMA deadline of October 11, 1998. Because of pollock issues, the NPFMC seldom has time to deal with crab issues and when it does, the issues are characteristically placed on the agenda for the meeting's last day. Thus, it is common for crab issues and the Crab Plan Team Report to not even be addressed, but to be postponed until the following meeting. The minutes of the Crab Plan Team meeting of January 6-7, 1998 presented at the the annual Joint Meeting of the NPFMC and the Alaska Board of Fisheries on February 3, 1998, are quite revealing in this regard:

In the review of upcoming meetings, the team noted that the Council /Board Consultation Group meeting, February 3, focuses again this year on groundfish and not crab. The team respectfully refers this group to the State/Federal Action Plan for Management of Commercial King and Tanner Crab Fisheries (October 1993) that outlines the purpose of the joint Council/Board meeting to meet publicly on an annual basis to focus on crab issues.

It is noteworthy that at this meeting, the Board of Fisheries formal announcement of the Call for Proposals for the March 1999 statewide king and tanner crab (triennial) meeting was included in the meeting packet—and the deadline for submission of proposals, April 10, 1998 was noted in the Council memorandum distributed to all participants at the meeting.

It is also of significance, that contrary to the recommendation of the Crab Plan Team in 1998 for the joint meeting to be a dedicated meeting on crab issues, the February 2, 1999 meeting once again focused on groundfish, with crab being only one of seven agenda items.

**PACIFIC NORTHWEST CRAB INDUSTRY ADVISORY COMMITTEE (PNCIAC) ROLE:**

Most of the petitioners, UCB and its members, are residents of Washington and Oregon. Others are residents of Alaska. All the petitioners have Board of Fisheries' sanctioned advisory committees available to them for input into Board of Fisheries actions. However, none of the individuals or the companies identified in the petition participated in the advisory committee(s) process prior to the meeting, nor did they participate at the Board of Fisheries meeting on crab issues in March, despite their claim about significant

impact to their fisheries income. It is of interest to note, however, that one of the petitioners, Harold Jones, was present at the meeting for several days, and but only participated in a Kodiak groundfish issue. He did not participate in the crab issues.

Of particular interest here is the PNCIAC role in the process. This committee was especially developed to provide a Board of Fisheries and NPFMC sanctioned forum for non-residents from Washington and Oregon involved in the Bering Sea/Aleutian Islands king and tanner crab fisheries. As Secretary of the PNCIAC since its inception in 1990, I can assure you that it has been my observation that PNCIAC members over the years have taken their charge in a responsible and serious manner. In short, the PNCIAC, under the Chairmanship of Rich White and now Garry Loncon, has strived over the years to develop a credible working relationship with the Board of Fisheries, ADF&G, State of Alaska advisory committees and the NPFMC. The committee has become an integral part of a successful joint state and federal fisheries management plan that has become a model for other inter-jurisdictional fisheries. One example is the Pacific Coast dungeness crab fishery. Another example, as I have been told as recent as the March Board of Fisheries meeting, is the State of Alaska is looking at the FMP and the shared state and federal framework within it, for developing a framework for subsistence fisheries management.

**CONCLUSION:**

The ACC regards the petition, and the interventions of the NPFMC and the NMFS, instigated by UCB to challenge the Board's actions, as calculated efforts aimed at defeating a legitimate public process.

Sincerely,



Ami Thomson, Executive Director  
Alaska Crab Coalition

cc: Rick Lauber, Chair, NPFMC  
Steve Pennoyer, Regional Director, Alaska, NMFS

LAW OFFICE OF  
BRUCE B. WEYHRAUCH

whyrock@ptialaska.net

114 So. Franklin St. • Suite 200  
Juneau, Alaska 99801  
Ph: (907) 463-5566 • Fax: (907) 463-5858

AGENDA D-2  
Supplemental  
April 1999



April 16, 1999

Via E-Mail and Mail

Mr. Lance Nelson, Assistant Attorney General  
Department of Law  
1031 W. 4<sup>th</sup> St.  
Suite 200  
Juneau Alaska 99501-1994

**Re: Bristol Bay King Crab and Alaska Board of Fisheries**  
**File: 4.10**

Dear Lance:

Thank you for talking with me last week regarding the Board of Fisheries actions regarding the adoption of proposals 291 and 355 by the Board. As you requested I enclose with the original of this letter some information related to those proposals, which I hope helps round out the record that you probably have from the Board. I am preparing a transcript of the Board's deliberations, and will send you that when it has been completed.

After you have had a chance to review these materials, please give me a call. The following are important points to consider relating to the Board's actions, and some of the documents discussed are included with this letter:

1. An article that appeared in the April 7, 1999 Anchorage Daily News regarding the Board's actions, and which quotes a pollock fishermen who believes he is aggrieved by the actions. This same article was reprinted in the April 9 Alaska Business Digest.
2. A letter sent to the Editor of the ADN from Gordon Blue of the Alaska Crab Coalition, which responds to the ADN article. This letter concisely sets out eight "bullet points" that you asked for providing a substantive basis for the Board's actions. A different version of this letter was



published in the Daily Sitka Sentinel, Monday, April 12, 1999, because the Sentinel reprinted the ADN article.

3. The action which has enraged some pollock fishermen was not "a pretty nasty deal, what a couple of the crabbers did." A statement that was attributed in the article to Cary Swasund of Seattle. It was Board of Fisheries actions taken with regard to different proposals submitted by the Alaska Crab Coalition (ACC) and the Alaska Department of Fish and Game (ADF&G) and Ron Briggs, a crab fisherman from Newport, Oregon. All these (and other) proposals were published in the Official Proposal book as part of the three year cycle of crab regulatory changes, and supported by a broad segment of the industry.
4. At the reasonable request of Mr. Briggs, the board agreed to move the start of the Bristol Bay red king crab two weeks earlier in the year. This action was taken to allow the 250 vessels of the fleet a reduction in the amount of time spent between seasons. In this era of depressed stocks and small quotas, this offers significant economic benefit (with round trip fares to Dutch Harbor to Anchorage in the vicinity of \$600), since nearly all vessels had been faced with the necessity to tie up and send crews home (4 to 7 persons, typically) for a two week period between seasons lasting 7 to 10 days and 4 to 5 days, respectively. This action by the Board was fully noticed before it took action, and brings the Bristol Bay season closer to the St. Matthew/Pribilof season so the vessels do not have to wait around so long between seasons. Also, the weather can be much better, which is an important safety consideration.
5. There are very important technical points regarding the Board's action on Proposal 291. Materials we received from the Board on Proposals 291 and 355 are enclosed.
6. Note that the "fair start" measure adopted by the Board does not stop anyone from fishing groundfish right up to the time they register for crab. (For example, many pot fishermen fish cod for bait, right before the crab season.) The key requirement is that the fishery be pursued outside the area of the crab fishery. NMFS defines Bering Sea pollock fishery in much larger geographic terms than any of the crab management areas. Therefore,

the measure adopted by the Board amounts to a closure, at most, of a portion of the NMFS pollock fishing area, specifically to vessels that wish to participate in the crab fishery. This is elective. In fact, the fair start proposal adopted by the Board is a somewhat weak measure because it does not stop information from being passed on from vessels that have elected to fish for groundfish in the area (foregoing crab), to vessels that elected to fish crab there. In the long term, relevant regulatory agencies may have to address that separate issue.

7. In addition, the fair start measure will facilitate enforcement by Fish and Wildlife Protection (F&WP) because it makes it easier to track and monitor vessels in the area, both by sea and air patrols.
8. A crab vessel switching to fish groundfish with trawl gear during the open tanner season, is not subject to the same gear storage restrictions as pot vessels that leave the crab fishery early, to go fish groundfish with pots. These pot vessels are required to store their gear unbaited, with doors open, and then go to Dutch Harbor to "de-register" from crab before entering the groundfish fishery. It seems that switching over mid-season to groundfish in the Bering Sea tanner crab registration area, leaving baited gear on the grounds, then re-registering for crab, parallels the fair start problem addressed in the Bristol Bay 30-day fair start requirement and illustrates the exempt status of trawlers from registration requirements that have been developed over the years for traditional pot boats. Proposals #354 and #355 submitted to the Board last year by the crab industry were worded to require a stand down both "prior to the season opening date, and or registration for a king or tanner crab fishery" to prevent immediate crossovers, particularly in the opillio fishery. ADF&G deleted the reference to "registration" as unnecessary, in the substitute language developed for the opillio 14-day stand down regulation. In the 1999 tanner crab fishery, apparently one pollock trawl vessel took advantage of this exemption. It began in the opillio fishery, then left the grounds to fish pollock, then re-registered and reentered the opillio fishery three weeks before the closure. F&WP and ADF&G can verify this incident, which sets a new precedent and a possible need for a new regulation.
9. Most of the trawl boats fishing pollock are less than 125 feet in length and only having observers onboard 30% of the time (the same for pot boats fishing groundfish). This would seem to allow greater opportunities for prospecting before the season. Thirty-five of 45 trawlers that fished Bristol

Bay in 1998 were less than 125 feet in length, according to the enclosed CFEC vessel registration list. This means that sixteen percent of the fleet was exempt from the fair start rule.

10. The high catches of the trawlers in the king crab fishery are noted in the letter to the ADN and in the enclosed United Catcher Boats letter (which letter is part of the Board's record). In at least one case, crab harvests by trawlers were three times higher than the average crab pot boat. This figure contradicts the ADF&G comparisons, noted in the Deliberation Materials, with the rest of the crab fleet. This information, again which was part of the Board's record when it deliberated on these proposals, points to strong possibilities of wholesale prospecting by the trawlers - - information that ADF&G cannot show for pot boats.

11. In testimony before the Board, Armi Thomson of the Alaska Crab Coalition clarified that the most productive king crab harvest statistical areas are open to so-called pelagic trawling, although closed by federal regulation to bottom trawling to protect crab habitat. In other words, the primary crab catch area (162-164 degrees and 56-57 degrees) is open to prospecting with pelagic trawl gear, but closed to pot gear (under the prior 14-day fair start regulation). In 1997, the entire Bristol Bay area was still open to bottom trawling at the time of the opening of the king crab season. The yellowfin sole fishery was still in progress, as the king crab caps had not been met. In 1998, the bycatch caps had been caught, and bottom trawling was closed in the area. However, this is a year to year seasonal matter, which further leads to the necessity for the 30-day stand down for trawl gear deployment before prospecting occurs.

12. In looking at the ability of trawlers to use pelagic trawl gear for prospecting, one needs to keep in mind the liberal definition of pelagic gear that NMFS uses. Pelagic trawl gear is virtually any trawl without rollers, bobbins, or chafing gear. It does not have to be an expensive specially designed "pollock pelagic trawl," using the operative industry definition. It can be an inexpensive old style bottom trawl, such as that used very effectively in the developing years of the king crab fishery in Alaska. These were footrope trawls that did not employ rollers, bobbins, or chafing gear. Trawl gear was used as an efficient gear in the early years of the fishery and has been used for many years as the primary gear for estimating crab stock abundance by the NMFS. According to NPFMC information, the pollock industry stated that pelagic gear is routinely used in direct

contact with the bottom, thus it can be used for prospecting. (We understand that the pollock industry is now saying the opposite of this.)

13. ACC's RC 130 with attachments responds to several complaints by trawlers regarding information the Board failed to consider when making the decision. It also contains information that responds to Steve Pennoyer's letter to the Board dated April 9, 1999. It notes fairness on allocative issues as to how trawlers would be affected vs. pot boats on economic issues. Attachments show trawlers vs. pot boats dependence on crab revenue, pollock revenue and other groundfish revenue. This information is drawn directly from the most recent NMFS and ADF&G catch and economic performance reports. Trawlers have other fishery opportunities available, whereas pot boats do not have such opportunities. These materials are also a significant, recent part of the administrative record of the NPFMC.
14. The Board's decision on "fair start" is not "allocative." The Board action is a Crab FMP Category 3 measure, "gear placement and removal." As such, it does not require North Pacific Council (NPFMC) oversight as do Category 2 measures. However, the Board did address several Magnuson-Stevens Act (MSFCMA) National Standards when it deliberated on this measure. There are significant conservation and development purposes underlying the decision. The intent of "fair start" is to eliminate pre-season prospecting. The necessity to eliminate preseason prospecting arises from the extreme shortness of the season (4-5 days). Prospecting before the season can greatly increase the profitability for the season and thus there is a very real incentive for doing it. But prospecting can create an unmanageable fishery.
15. The "fair start" proposal was submitted to the Board by ACC over a year ago to address crab prospecting on fishing grounds. The proposal that was adopted by the Board was developed in response to ADF&G's Proposal that would have restricted groundfish gear from 14 to 30 days to further deter prospecting and unfair competitive advantages for boats in the king crab fishery. The ACC responded to ADF&G by proposing a 30-day prohibition on all groundfish gears in the Bering Sea king and tanner crab fisheries.
16. The Board's action in effect implements a 30 day prohibition for pot and trawl gear (excluding hook and line) in Area T, Bristol Bay King Crab (east of 168 degrees latitude and south of 58 degrees longitude to Saricheff and east to the shores of Bristol Bay). This measure recognizes the efficiency

Mr. Lance Nelson

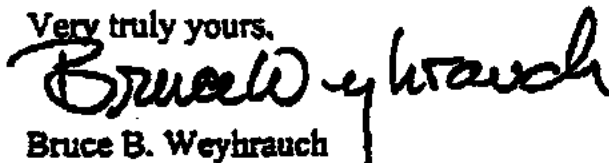
April 16, 1999

Page 6

of trawl gear for catching crab and that 35 of those boats are fishing with pelagic trawl gear immediately preceding the opening of the crab season, but then switching over to crab just before the crab season opening on November 1. In 1998, the fall pollock B season closed October 29, which is about 60 hours before the opening of the king crab season.

Please let me know if you would like additional information on this.

Very truly yours,

A handwritten signature in black ink that reads "Bruce B. Weyhrauch". The signature is written in a cursive, flowing style with a vertical line extending downwards from the end of the name.

Bruce B. Weyhrauch

Enclosures

**BUSINESS LINE**

# Pollock fishermen angered by crab rule

**UA president's call**

University of Alaska students and employees should lead the fight for increased funding, the school's new president said in his first State of the University speech.

Mark Hamilton, a retired general who once led the Army's recruiting efforts, said the university needs more

money from Juneau to remain a good education value. "This is a call to action," he told a packed auditorium crowd last week at the University of Alaska Fairbanks. "We cannot get there without informed voices talking to the Legislature." Since he was hired in June, Hamilton has lobbied hard for his proposed budget, which calls for a \$16.3 million increase in state contributions each of the next three years.

**Alyeska does review**

The Alyeska Pipeline Service Co. has begun a review of its tanker vapor control system at the Valdez Marine Terminal. The review, which is expected to take three months, was begun after prob-

**Hamilton**

UNALASKA — Pollock fishermen are enraged by recent Alaska Board of Fisheries actions excluding them from harvesting Bristol Bay red king crab.

Crabbers lobbied for the changes, which could mean millions of dollars in additional product for them. The crabbers say pollock trawlers had an unfair preseason advantage and the Board of Fisheries merely ended that advantage.

The Fish Board has extended the waiting period from 14 to 30 days before fishermen can launch red king crab pots after ceasing pollock trawling. It also set a new opening date, Oct. 15, two weeks earlier than in the past.

Because this year's final pollock season is expected to open Sept. 15 and last several weeks, the pollock fishermen will be unable to start fishing for the red king crab when that season starts Oct. 15. In the past, the crab season has lasted about five days.

United Catcher Boats hopes federal regulators reject the new rules, said Brent Paine, executive director of the Seattle-based group representing 64 pollock boats, including 28 "crossovers" that also fish crab.

*'That was a pretty nasty deal, what a couple of crabbers did.'*

— Cary Swasand, Aleutian Spray Fisheries

The state manages crab fishing in federal waters by agreement with the federal government, which retains final authority. The new rules, adopted in Anchorage on March 24, are being reviewed by the National Marine Fisheries Service.

But if federal attorneys uphold the state, United Catcher Boats might sue.

"If it looks like this thing is going to go forward, we're definitely going to look at some kind of relief in the courts. It's too big of an impact," said Paine.

"That was a pretty nasty deal, what a couple of the crabbers did," said Cary Swasand of Aleutian Spray Fisheries in Seattle. "I'm up in arms over this, big time. It's over a million dollars a year they're taking away from me."

The board acted to prevent "prospecting," which gives fishermen the advantage of finding crab before the season

opens. Any prospecting that occurred could speed up the crab fishery, which biologists say is already too fast for good management.

Paine denies that trawl gear is used for prospecting. The Alaska Department of Fish and Game biologist who regulates Bering Sea shellfish, Rance Morrison in Unalaska, also said there's no evidence of such prospecting.

However, the board believes otherwise, said member Dan Coffey of Anchorage.

"There's an absolute risk of that happening," said Coffey, especially because catcher boats are required to have observers on board only 30 percent of the time and can easily prospect undetected.

"We're going to make damn sure that if you survey, your survey is going to be 30 days old before you get back into the fishery."

Morrison said the longer waiting period was recom-

mended by the Alaska Crab Coalition of Seattle, not Fish and Game.

Paine said 35 "crossover" boats are affected, including some operated by traditional crab fishermen who got into pollock during poor crab years. But crabbers complain they don't have that option anymore, thanks to last year's federal American Fisheries Act, which specifies vessels eligible for Bering Sea pollock.

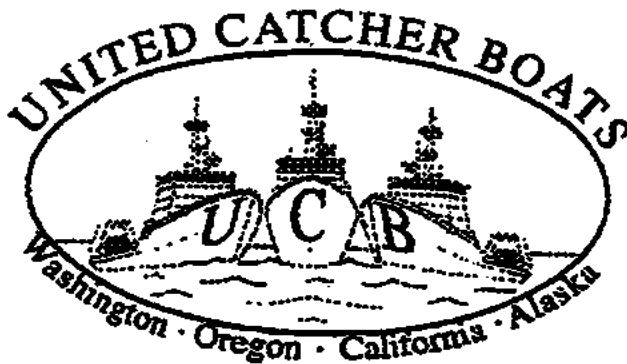
"The American Fisheries Act took away my option to go pollock fishing if the crab stock went away," said crab fisherman Lance E. Farr in a letter to the Board of Fisheries.

Coffey said the opening date was moved forward so there's less dead time following the St. Matthew and Pribilof king crab seasons in September.

He acknowledged a tradeoff, because the old start gave crab an extra two weeks to grow larger and meatier. But he said the benefits are greater, including less likelihood of storms and fewer crab dying on deck from colder weather later in the year.

— Jim Paulin

Brent C. Paine  
Executive Director



70132  
Steve Hughes  
Technical Director

March 23, 1999

Mr. Dan Coffee, Chairman  
Alaska Board of Fisheries Bering Sea Crab Subcommittee  
Captain Cook Hotel  
Anchorage, AK

RE: Comments to Committee D and Committee E, Bering Sea Crab Issues

Dear Mr. Coffee,

Thank you for allowing me to present comments on the various proposals before the Board pertaining to Bering Sea crab management. This letter will serve as United Catcher Boats' comments to the proposals reviewed by Committee D and E yesterday.

United Catcher Boats is an association of 63 catcher vessels, of which all trawl in the North Pacific, and 28 presently participate in the Bering Sea crab fisheries. We are combination vessels, most of which pioneered both the crab and groundfish fisheries in the North Pacific. The impacts of the various proposals reviewed yesterday to the vessels in UCB are huge. For example, the 28 vessels that presently fish in the Bering Sea crab fisheries potentially could be excluded from these fisheries. I ask that you and your fellow Board members realize the economic loss to these vessels when considering the following proposals.

Proposal 354 & 355, OPERATION OF OTHER POT GEAR Regarding this proposal, UCB strongly requests the Board to not adopt either proposal for the following reasons:

1. TOO PUNITIVE UCB vessels have historically depended on a number of crab and groundfish fisheries. This action would force our vessels to forgo 30 days of groundfish fishing prior to the opening of a crab fishery. Do you have information that provides you with the cost to the 39 vessels (vessels that currently trawl and crab in the Bering Sea) having to forgo fishing for 30 days prior to a crab opener if they choose to fish crab? Our pollock fishery in the Bering Sea now lasts about 90 days. If we choose to fish both the *opilio* and BB red king crab fisheries, we would have to forgo 60 days of groundfish fishing (primarily Pollock A, B and C seasons). The effect of this action would be this: we would either fish in the pollock fishery or the crab fishery, and no longer would be able to fish in both fisheries. If we forgo 60 days of pollock fishing, this would bankrupt these operations. 39 vessels is over 30% of the current Bering Sea catcher vessel pollock fleet.

2. **HIGHLY ALLOCATIVE** The effect of these proposals would be to reallocate the amount of crab harvested by the vessels that fish for groundfish to the vessels that don't fish for groundfish. Approximately 28 of the UCB member vessels participated in the BB red King crab fishery in 1998. Our average catch was 100,000 lbs., that is a total of 2.8 million pounds of crab, or roughly \$3 million reallocated just from the UCB vessels.

*Fleet average catch 511 pound*

3. **PROSPECTING WITH TRAWL GEAR DOES NOT HAPPEN** The proposal author argues that trawl gear can be used to find out where the crab are located prior to the start of the crab fishery. This is ludicrous for the following reasons:

*30% Observer coverage does not apply*

- Crab PSC is a precious thing that constrains the directed groundfish fishery. It is not squandered to prospect for good crab grounds
- Bottom trawl Groundfish fisheries in October are mostly closed due to attainment of the TAC or PSC
- The most productive red king crab grounds are closed to non-pelagic trawling most of the year
- The pollock fishery is allocated 1,970 red king crab and 14,077 bairdi as PSC. NMFS data show that these PSC caps have never been reached, and that in the month of October of 1998, a deminimus amount king crab were taken as bycatch in the pollock fishery.

4. **BOARD LACKS LEGAL JURISDICTION** We believe the Board of Fisheries does not have legal authority to regulate a federal groundfish fishery. This proposal effectively creates a federal "fair start" regulation that affects the Bering Sea groundfish fisheries, a fishery that is managed by the federal government. In addition, we believe the federal Crab FMP does not provide the authority for the Board of Fisheries to create fair start provisions between groundfish and crab fisheries. We request that the Board request a legal opinion on this issue from NOAA General Counsel.

## PROPOSAL 287 FISHING SEASONS FOR AREA T

UCB strongly requests the Board to not adopt either proposal for the following reasons:

1. **HIGHLY ALLOCATIVE** Vessels that normally fish in the BS pollock fishery would be forced to decide between participating in the BB king crab fishery or the BS pollock fishery as the pollock fishery occurs throughout the month of October. For example, the department recently changed the opening date of the BS hair crab fishery to accommodate the vessels that fish crab in other areas (Pribs & St. Mat). UCB vessel owners would appreciate the same accommodation afforded the crab fleet.

2. **REDUCTION IN YIELD** Bob Otto stated at the committee yesterday that the highest yield of meat per crab occurs on or around Nov. 1. By backing the fishery into early October, the fleet is forgoing the maximum yield, or value, per crab. No analysis has been done to provide you with the information needed to determine what this yield loss would be. For us, the attempt to force out vessels who fish pollock from the crab fishery is a poor trade off for fishing on crab with less value.

## PROPOSAL 288 HARVEST STRATEGY

UCB vessel owners support the current Department's use of the length-based model. Thus we ask the Board to not support this proposal. Rather, the Board should support department research into the stock/recruit relationship for red king crab.



## **PROPOSAL 285 & 286 POT LIMITS**

CB vessel owners choose to not engage in a "big boat - small boat" allocation battle, as our organization has both big and small vessels.

However, we find it disingenuous that the vessel owners who argue for removal of the crabber/trawler vessels based on the argument that the fishery occurs in too short of a period can argue that effort (pots) not be reduced.

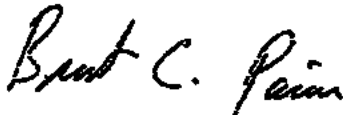
We ask that the Board ask the Department of Fish and Game if they believe that a reduction in the number of pots would result in lengthening the fishery to 6 or more days. In other words, can the Department determine, qualitatively or quantitatively, what the limit of number of pots is to result in a 6-day BB red king crab fishery.

### **SOME GENERAL COMMENTS**

We realize the attempts by the crab vessel owners and their association's to remove from the crab fisheries the vessels that are qualified to fish for pollock in the Bering Sea. This was attempted at the NPFMC level in October 1998 and now at the Board level indirectly through proposals 355 and 287. What is at issue is the overcapitalization of the fleet, something that the Council has attempted to address through License Limitation. The factors involved are determination of: 1) present participation, historical fishing practices and dependence on the fishery (Mag/Stevens Act and National Standards). Alternatives to reduce effort need to be measured against these standards, not indirectly through fair start and season start date proposals that have the effect of indirectly reducing effort and thereby reallocating the harvest.

We ask that the Board know the economic effects of such proposals before acting. Thank you for your consideration of our comments.

Sincerely,



**Brent Paine**

REVISED: 12/2/98

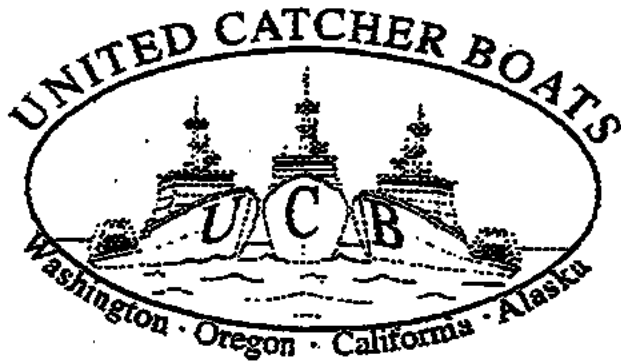
LIST OF BERING SEA SB 1221 COOP-ELIGIBLE POLLOCK/GROUNDFISH TRAWLERS, NPFMC APPROVED, ALTERNATIVE #9 FOR THE LICENSE LIMITATION PROGRAM, FOR BERING SEA KING & TANNER CRAB FISHERIES. TOTAL VESSELS: 41

VESSEL NAME	ADF&G	LOA	OWNERSHIP INFORMATION
AJ	57934	150	Saga Sfds. (49% Norway) WA
ALASKA DAWN (OK alt. 4)	69765	90	William Gilbert AK
ALDEBARAN	48215	132	Trident Sfds. WA
ALSEA	40749	124	Halls OR
AMERICAN EAGLE (OK alt. 4)	00039	120	R. Tynes, J. Wabey WA
ARCTIC WIND	01112	123	Victor Sfds. WA
ARCTURUS	45978	132	Trident Sfds. WA
ARGOSY (OK alt. 4)	38547	124	Halls OR
BLUE FOX (Attached, NMFS memo)	62892 or 66039 ?	85	Pacific Druggers Inc. OR
COMMODORE	53843	133	Victor Sfds., J. Johannesen WA
DOMINATOR (OK alt. 4)	08668	130	Trident Sfds. WA
DONA MARITTA (OK alt. 4)	51672	152	Trident Sfds. R. Desautel WA
ELIZABETH F	14767	90	Brekken/S. Stutes AK
FIERCE ALLEGIANCE (OK alt. 4)	55111	166	R. Mezich WA
FLYING CLOUD (OK alt. 4)	32473	124	Trident Sfds. WA
GOLDEN DAWN (CDO)	35687	149	Trident Sfds., APICDA AK
GOLDEN PISCES (OK alt. 4)	32817	98	Elmer McNabb OR
GUN MAR	41312	172	G. Ildhuso (Ocean Phoenix) WA
LADY JOANNE (OK alt. 4)	62922	58	David Wilson AK
LISA MARIE (CDO)	70221	78	YDFDA AK
MAJESTY	60650	106	Trident Sfds. WA
MAR GUN	12110	110	G. Ildhuso (Ocean Phoenix) WA
MARCY J (OK alt. 4)	00055	97	H. Jones AK
MARGARET LYN	31672	103	R. Czeisler (Ocean Phoenix) WA
MARK 1	06440	98	C. Garbrick (Ocean Phoenix) WA
MUIR MILACH	41021	86	D. Fraser WA
NORDIC FURY	00200	93	Hovik/Stone (Ocean Phoenix) WA
NORDIC STAR	00961	123	C. Swasand WA
OCEAN HARVESTOR (OK alt. 4)	00101	108	K. Ness (Trident partner) WA
OCEANIC	03404	122	E. Langesater (Ocean Phoenix) WA
PACIFIC FURY	00033	110	M. Stone (Ocean Phoenix) WA
ROYAL AMERICAN	40840	105	O. Austneberg WA
SEA STORM	40969	123	W. Pereyra (50% S. Korea) WA
SEA WOLF	35957	143	AK Boat Co. WA
SEADAWN	00077	124	F. Yeck OR
STAR FISH (OK alt. 4)	00012	123	C. Swasand WA
STARLITE	34931	123	C. Swasand WA
STARWARD	39197	123	C. Swasand WA
STORM PETREL	39860	123	Victor Sfds., J. Johannesen WA
VESTERAALEN	38342	124	E. Pedersen (Ocean Phoenix) WA
VIKING EXPLORER (OK alt. 4)	36045	125	Trident Sfds. WA

MAJOR PERMIT HOLDERS: Ocean Phoenix group 7, vessel owners are partners in the mothership; Swasand/Starbound 4; Trident Sfds 9; Victor Sfds./Johannesen 3; Sub Total, 23 of 41.

ADDITIONAL SB 1221 VESSELS CURRENT PARTICIPANTS IN BSAI CRAB NOT QUALIFIED UNDER ALT. #9: DONA LILLIANA, HALF MOON BAY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, VANGARD. Sub Total: 7. (Total SB 1221 Alternative 4 Qualified: 13)

Brent C. Paine  
Executive Director



RC 132

Steve Hughes  
Technical Director

March 23, 1999

Mr. Dan Coffee, Chairman  
Alaska Board of Fisheries Bering Sea Crab Subcommittee  
Captain Cook Hotel  
Anchorage, AK

RE: Comments to Committee D and Committee E, Bering Sea Crab Issues

Dear Mr. Coffee,

Thank you for allowing me to present comments on the various proposals before the Board pertaining to Bering Sea crab management. This letter will serve as United Catcher Boats' comments to the proposals reviewed by Committee D and E yesterday.

United catcher Boats is an association of 63 catcher vessels, of which all trawl in the North Pacific, and 28 presently participate in the Bering Sea crab fisheries. We are combination vessels, most of which pioneered both the crab and groundfish fisheries in the North Pacific. The impacts of the various proposals reviewed yesterday to the vessels in UCB are huge. For example, the 28 vessels that presently fish in the Bering Sea crab fisheries potentially could be excluded from these fisheries. I ask that you and your fellow Board members realize the economic loss to these vessels when considering the following proposals.

Proposal 354 & 355, OPERATION OF OTHER POT GEAR Regarding this proposal, UCB strongly requests the Board to not adopt either proposal for the following reasons:

1. TOO PUNITIVE UCB vessels have historically depended on a number of crab and groundfish fisheries. This action would force our vessels to forgo 30 days of groundfish fishing prior to the opening of a crab fishery. Do you have information that provides you with the cost to the 39 vessels (vessels that currently trawl and crab in the Bering Sea) having to forgo fishing for 30 days prior to a crab opener if they choose to fish crab? Our pollock fishery in the Bering Sea now lasts about 90 days. If we choose to fish both the *opilio* and BB red king crab fisheries, we would have to forgo 60 days of groundfish fishing (primarily Pollock A, B and C seasons). The effect of this action would be this: we would either fish in the pollock fishery or the crab fishery, and no longer would be able to fish in both fisheries. If we forgo 60 days of pollock fishing, this would bankrupt these operations. 39 vessels is over 30% of the current Bering Sea catcher vessel pollock fleet.

2. **HIGHLY ALLOCATIVE** The effect of these proposals would be to reallocate the amount of crab harvested by the vessels that fish for groundfish to the vessels that don't fish for groundfish. Approximately 28 of the UCB member vessels participated in the BB red King crab fishery in 1998. Our average catch was 100,000 lbs., that is a total of 2.8 million pounds of crab, or roughly \$3 million reallocated just from the UCB vessels.

3. **PROSPECTING WITH TRAWL GEAR DOES NOT HAPPEN** The proposal author argues that trawl gear can be used to find out where the crab are located prior to the start of the crab fishery. This is ludicrous for the following reasons:

- Crab PSC is a precious thing that constrains the directed groundfish fishery. It is not squandered to prospect for good crab grounds
- Bottom trawl Groundfish fisheries in October are mostly closed due to attainment of the TAC or PSC
- The most productive red king crab grounds are closed to non-pelagic trawling most of the year
- The pollock fishery is allocated 1,970 red king crab and 14,077 bairdi as PSC. NMFS data show that these PSC caps have never been reached, and that in the month of October of 1998, a deminimus amount king crab were taken as bycatch in the pollock fishery.

4. **BOARD LACKS LEGAL JURISDICTION** We believe the Board of Fisheries does not have legal authority to regulate a federal groundfish fishery. This proposal effectively creates a federal "fair start" regulation that affects the Bering Sea groundfish fisheries, a fishery that is managed by the federal government. In addition, we believe the federal Crab FMP does not provide the authority for the Board of Fisheries to create fair start provisions between groundfish and crab fisheries. We request that the Board request a legal opinion on this issue from NOAA General Counsel.

## **PROPOSAL 287 FISHING SEASONS FOR AREA T**

UCB strongly requests the Board to not adopt either proposal for the following reasons:

1. **HIGHLY ALLOCATIVE** Vessels that normally fish in the BS pollock fishery would be forced to decide between participating in the BB king crab fishery or the BS pollock fishery as the pollock fishery occurs throughout the month of October. For example, the department recently changed the opening date of the BS hair crab fishery to accommodate the vessels that fish crab in other areas (Pribs & St. Mat). UCB vessel owners would appreciate the same accommodation afforded the crab fleet.

2. **REDUCTION IN YIELD** Bob Otto stated at the committee yesterday that the highest yield of meat per crab occurs on or around Nov. 1. By backing the fishery into early October, the fleet is forgoing the maximum yield, or value, per crab. No analysis has been done to provide you with the information needed to determine what this yield loss would be. For us, the attempt to force out vessels who fish pollock from the crab fishery is a poor trade off for fishing on crab with less value.

## **ROPOSAL 288 HARVEST STRATAGY**

UCB vessel owners support the current Department's use of the length-based model. Thus we ask the Board to not support this proposal. Rather, the Board should support department research into the stock/recruit relationship for red king crab.

## **PROPOSAL 285 & 286 POT LIMITS**

'CB vessel owners choose to not engage in a "big boat - small boat" allocation battle, as our organization has both big and small vessels.

However, we find it disingenuous that the vessel owners who argue for removal of the crabber/trawler vessels based on the argument that the fishery occurs in too short of a period can argue that effort (pots) not be reduced.

We ask that the Board ask the Department of Fish and Game if they believe that a reduction in the number of pots would result in lengthening the fishery to 6 or more days. In other words, can the Department determine, qualitatively or quantitatively, what the limit of number of pots is to result in a 6-day BB red king crab fishery.

### **SOME GENERAL COMMENTS**

We realize the attempts by the crab vessel owners and their association's to remove from the crab fisheries the vessels that are qualified to fish for pollock in the Bering Sea. This was attempted at the NPFMC level in October 1998 and now at the Board level indirectly through proposals 355 and 287. What is at issue is the overcapitalization of the fleet, something that the Council has attempted to address through License Limitation. The factors involved are determination of: 1) present participation, historical fishing practices and dependence on the fishery (Mag/Stevens Act and National Standards). Alternatives to reduce effort need to be measured against these standards, not indirectly through fair start and season start date proposals that have the effect of indirectly reducing effort and thereby reallocating the harvest.

We ask that the Board know the economic effects of such proposals before acting. Thank you for your consideration of our comments.

Sincerely,



**Brent Paine**



UCB Comments on March 1999  
Board of Fish Action to:  
*Change Bristol Bay Red King Crab  
Season Start Date  
from November 1 to October 15  
and Implement 30 Day Trawler  
Stand-down Prior to Crab Season*

Board of Fish March 1999 Action to:  
*Exclude Combination Trawler/Crabbers  
From Crab Fisheries*

- was well calculated
- proposed by Alaska Crab Coalition
- knowingly excluded NPFMC
- circumvented established NPFMC/NMFS due process with BOF
- excluded industry who relied upon joint BOF/NPFMC due process
- is contrary to NPFMC decision on crab LLP eligibility (Alternative 9)
- was based in part on false information from proposals submitted by ACC

**Board of Fish March 1999 Action on**  
***Proposal #287 to Move Back the Bristol Bay Red***  
***King Crab Season Start Date:***

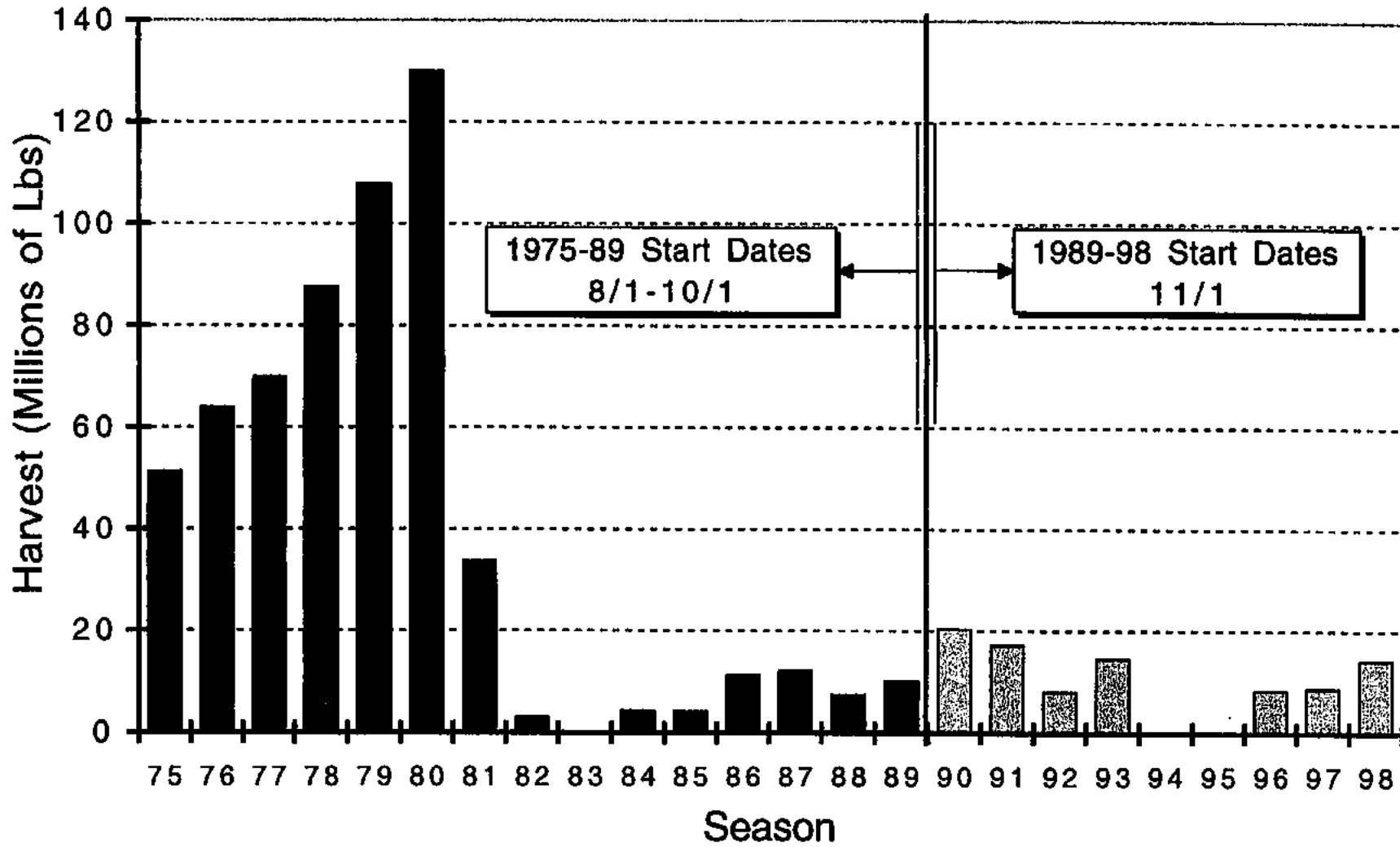
- will exclude pollock trawlers who also fish red king crab by creating a seasonal overlap
- will cause harvest of red king crab at less than maximum meat yield
- will result in increased crab dead loss
- will result in losses of revenue to crab processors and community tax bases as well as to combination trawler/crabbers
- is inconsistent with MFCMA, NPFMC crab FMP and BOF regulations



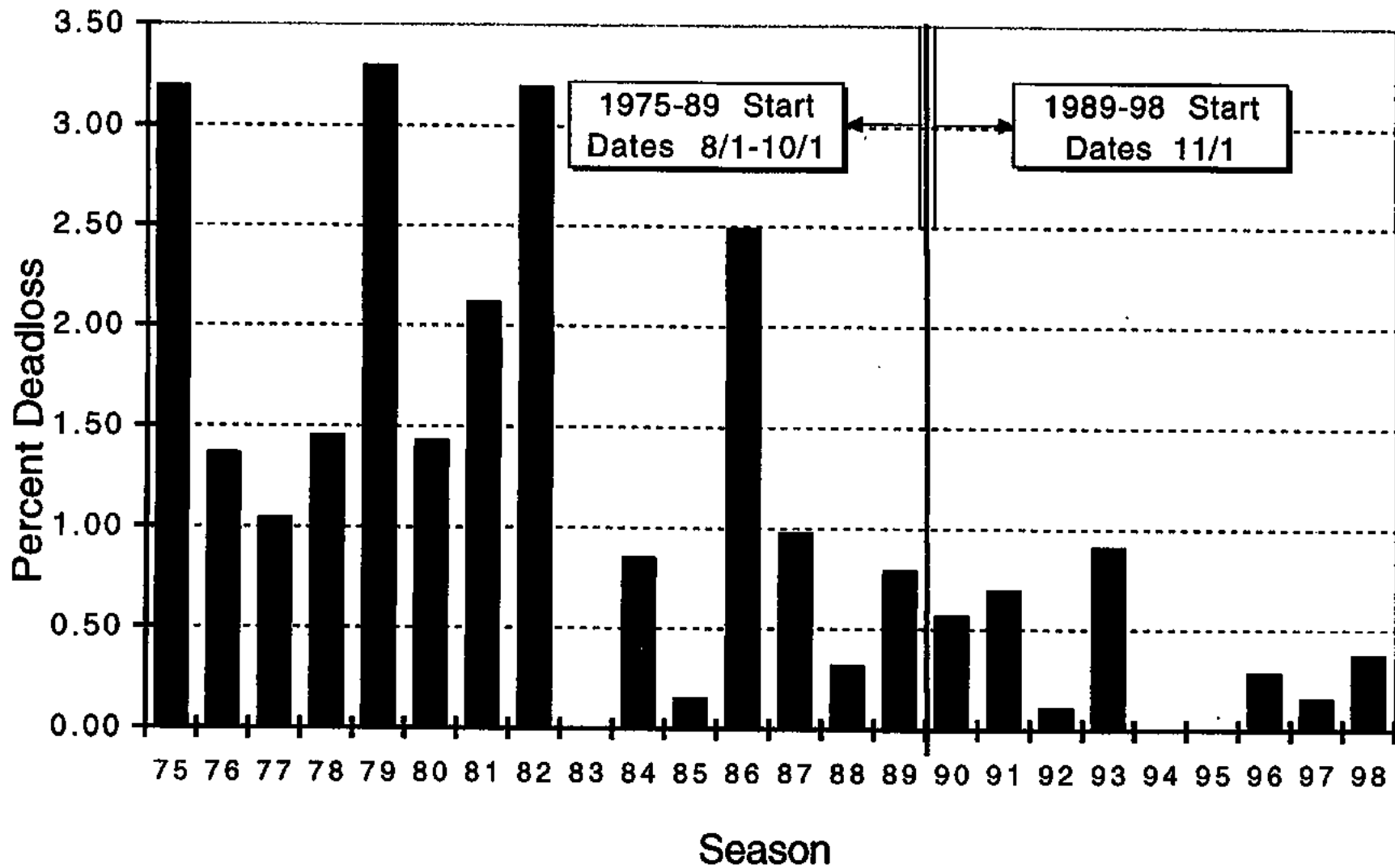
**Board of Fish March 1999 Action on**  
***Proposal #291 to Implement a 30 Day Exclusion on***  
***Trawlers from Fishing Bristol Bay Red King Crab:***

- will exclude pollock trawlers from the Bristol Bay red king crab fishery due to a 30 day stand-down
- is founded upon the BOF's apparent belief that combination trawler/crabbers fishing Bering Sea pollock are prospecting for red king crab
- is total nonsense
- has no factual basis of support
- facts show the contrary is true
- is outside BOF authority

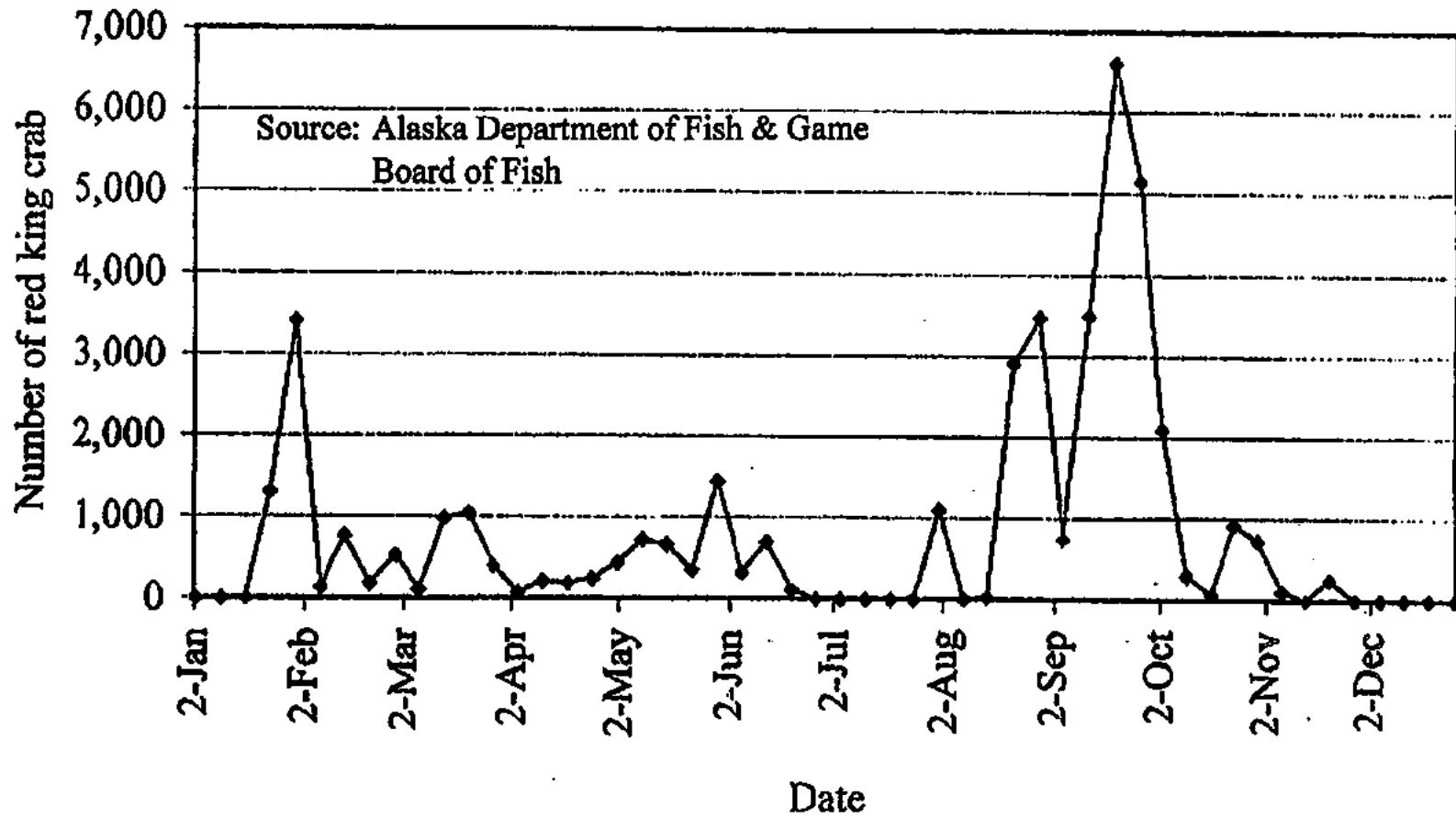
Total harvest (millions of lbs) of Bristol Bay RKC, 1975-1998.



Total percent deadloss from harvest of Bristol Bay RKC, 1975-1998.



Red king crab by catch in selected BS/AI trawl fisheries, 1993, 1996-1998.



**Fishery performance of cross over trawl vessels in  
Area T red king crab fishery, 1993, 1996-1997.**

**Source: Alaska Department of Fish & Game, Board of Fish**

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<b>YEAR</b>	<b>RED KING CRAB VESSELS REGISTERED</b>	<b>TRAWL VESSELS REGISTERED FOR RED KING CRAB</b>	<b>FLEET AVERAGE RED KING CRAB CATCH</b>	<b>AVERAGE RED KING CRAB CATCH FOR TRAWL VESSELS</b>
<b>1993</b>	<b>292</b>	<b>18</b>	<b>50,098</b>	<b>45,364</b>
<b>1996</b>	<b>196</b>	<b>8</b>	<b>42,886</b>	<b>43,309</b>
<b>1997</b>	<b>256</b>	<b>39</b>	<b>34,205</b>	<b>33,620</b>

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Cumulative Zone 1 Red King Crab Bycatch (# of crab) in Bering Sea Pollock, Atka Mackerel, and Other Fisheries Category, 1997 and 1998. Source: NMFS Alaska Region

1998 Bering Sea Pollock B Season (# of Red King Crab)

<u>Week Ending Date</u>	<u>Cumulative</u>	<u>Crabs per Week</u>
08/15/98	1,384	-
08/22/98	1,805	421
08/29/98	1,805	0
09/05/98	1,839	34
09/12/98	1,839	0
09/19/98	7,416	5,577
09/26/98	12,051	4,635
10/03/98	13,473	1,422
10/10/98	13,004	-469
10/17/98	12,828	-176
10/31/98	13,409	581

1997 Bering Sea Pollock B Season (# of Red King Crab)

<u>Week Ending Date</u>	<u>Cumulative</u>	<u>Crabs per Week</u>
08/09/97	137	-
08/16/97	137	0
08/23/97	137	0
09/06/97	137	0
09/13/97	137	0
09/20/97	137	0
09/27/97	137	0
10/04/97	137	0
10/11/97	137	0
10/18/97	137	0
10/25/97	137	0
11/01/97	137	0



# UCB Requests of NPFMC

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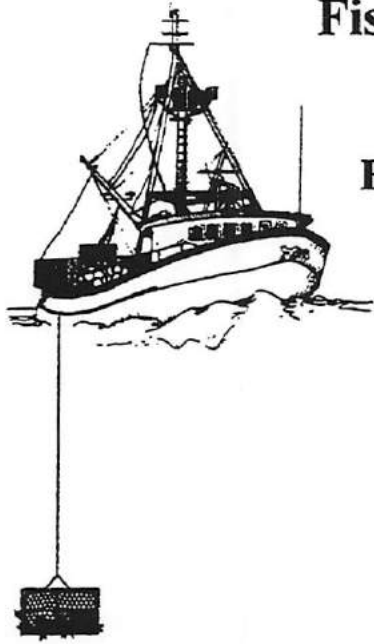


- Evaluate BOF Actions for Consistency with BOF/NPFMC/NMFS Shared Management
- Recommend to NMFS that BOF Actions on # 287, # 291 and # 355 be Repealed by NMFS
- Initiate a Full Federal Review of State of Alaska Crab Management
- Evaluate State Compliance or Lack of Compliance with Federal Laws/Regulations on Achieving MSY, Lack of Crab Bycatch Management, Management by Landings Rather Than Catch and Due Process
- Take Appropriate Actions

# Summary of the Fishery Management Plan

for

## Bering Sea/Aleutian Islands King and Tanner Crabs



July 18, 1998



North Pacific Fishery Management Council  
605 W. 4th Avenue, Suite 306  
Anchorage, Alaska 99501



**Summary of the  
Bering Sea/Aleutian Islands  
King and Tanner Crab Fishery Management Plan (FMP)**

The Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BSAI) was approved by the Secretary of Commerce on June 2, 1989. The FMP establishes a State/Federal cooperative management regime that defers crab management to the State of Alaska with Federal oversight. State regulations are subject to the provisions of the FMP, including its goals and objectives, the Magnuson-Stevens Act national standards, and other applicable federal laws. The FMP has been amended several times since its implementation.

**Amendments to the BSAI king and Tanner crab FMP.**

1. Defined overfishing
2. Established Norton Sound superexclusive area registration
3. Established a Research Plan
4. Established a moratorium on new vessels
5. Established a vessel License Limitation Program
6. Repealed the Research Plan
7. Revised overfishing definition and updated FMP (proposed)
8. Defined essential fish habitat (proposed)

The king and Tanner crab FMP is a "framework" plan, allowing for long-term management of the fishery without needing frequent amendments. Therefore, the plan is more general than other FMPs, and establishes objectives and alternative solutions instead of selecting specific management measures. Within the scope of the management goal, the FMP identifies seven management objectives and a number of relevant management measures used to meet these objectives. Several management measures may contribute to more than one objective, and several objectives may mesh in any given decision on a case-by-case basis.

**FMP Management Goal**

The management goal in the FMP is to maximize the overall long-term benefit to the nation of Bering Sea Aleutian Islands (BSAI) king and Tanner crab stocks by coordinated federal and state management, consistent with responsible stewardship for conservation of the crab resources and their habitats.

**FMP Management Objectives**

1. **Biological Conservation Objective.** *Ensure the long-term reproductive viability of king and Tanner crab populations.*
2. **Economic and Social Objective.** *Maximize economic and social benefits to the nation over time.*
3. **Gear Conflict Objective.** *Minimize gear conflict among fisheries.*
4. **Habitat Objective.** *Preserve the quality and extent of suitable habitat.*
5. **Vessel Safety Objective.** *Provide public access to the regulatory process for vessel safety considerations.*
6. **Due Process Objective.** *Ensure that access to the regulatory process and opportunity for redress are available to interested parties.*

7. **Research and Management Objective.** *Provide fisheries research, data collection, and analysis to ensure a sound information base for management decisions.*

**FMP Management Measures**

The FMP defers much of the management of the BSAI crab fisheries to the State of Alaska using the following three categories of management measures:

1. Those that are fixed in the FMP and require a FMP amendment to change;
2. Those that are framework-type measures that the state can change following criteria set out in the FMP; and
3. Those measures that are neither rigidly specified nor frame-worked in the FMP.

Management measures in category 1 may be addressed through submission of a proposal to the North Pacific Fishery Management Council (NPFMC). Management measures in categories 2 and 3 may be adopted under state laws subject to the appeals process provided for in the FMP.

<b>Management measures implemented for the BSAI king and Tanner crab fisheries, as defined by the federal crab FMP, by category.</b>		
<b>Category 1 (Fixed in FMP)</b>	<b>Category 2 (Frameworked in FMP)</b>	<b>Category 3 (Discretion of State)</b>
<ul style="list-style-type: none"> <li>* Legal Gear</li> <li>* Permit Requirements</li> <li>* Federal Observer Requirements</li> <li>* Limited Access</li> <li>* Norton Sound Superexclusive Registration Area</li> </ul>	<ul style="list-style-type: none"> <li>* Minimum Size Limits</li> <li>* Guideline Harvest Levels</li> <li>* Inseason Adjustments</li> <li>* Districts, Subdistricts and Sections</li> <li>* Fishing Seasons</li> <li>* Sex Restrictions</li> <li>* Closed Waters</li> <li>* Pot Limits</li> <li>* Registration Areas</li> </ul>	<ul style="list-style-type: none"> <li>* Reporting Requirements</li> <li>* Gear Placement and Removal</li> <li>* Gear Storage</li> <li>* Gear Modifications</li> <li>* Vessel Tank Inspections</li> <li>* State Observer Requirements</li> <li>* Bycatch Limits (in crab fisheries)</li> <li>* Other</li> </ul>

**Category 1 Management Measures**

*Legal Gear* - The FMP specifically prohibits the use of trawls and tanglenet gear for catching king and Tanner crab because of the high mortality rates that could be inflicted on nonlegal crab.

*Permit Requirements* - The FMP assumes that all crab fishermen are licenced and vessels are licensed and registered under the laws of the State, and as such, while fishing in the EEZ are subject to all State regulations that are consistent with the FMP, Magnuson-Stevens Act, and other applicable law. Hence, no fishing permits are required for harvesting vessels, except as required by the Moratorium and, in the future, the License Limitation Program.

*Federal Observer Requirements* - Any vessel fishing for or processing king and Tanner crab in the BSAI shall be required to carry an observer if requested so by the NMFS Regional Administrator.

*Limited Access* - A system of limited access is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. Beginning in 1996, a moratorium on vessels entering the BSAI crab fisheries was implemented. This moratorium will be in effect until superseded by implementation of the License Limitation System that was approved by the Secretary in 1997.

*Norton Sound Superexclusive Area Registration* - The FMP establishes the Norton Sound section of the Northern District king crab fishery as a superexclusive registration area. Any vessel registered and participating in this fishery would not be able to participate in other BSAI king crab fisheries.

### Category 2 Management Measures

*Minimum Size Limits* - Under the FMP, the state can adjust size limits within the constraints of available information. Biological considerations are used to establish minimum legal size limits to ensure that conservation needs are served. Preference for larger crabs based upon market and other economic considerations is accommodated by industry rather than through regulation.

*Guideline Harvest Levels* - The FMP authorizes the state to set preseason guideline harvest levels (GHLs), which limit the total annual harvest of crab. Seasons or areas may be closed when the GHL is reached, or earlier or later based on current inseason information.

*Inseason Adjustments* - When an event occurs inseason that affects preseason predictions, or a preseason prediction proves to be incorrect, compensatory inseason adjustments must be made to keep the management system on track toward meeting the biological and economic objectives of the FMP. The FMP authorizes the state to make inseason adjustments to GHLs, to fishing period lengths, and to close areas under state regulations.

*District, Subdistrict, and Section Boundaries* - The FMP authorizes the state to adjust district, subdistrict, and section boundaries to manage reasonably distinct stock of crab.

*Fishing Seasons* - Under the FMP, fisheries should be closed during sensitive biological periods to protect crab from mortality caused by handling and stress when shells are soft, and to maximize meat recovery by delaying harvest until the shells have filled out. Fisheries conducted during sensitive biological periods should prevent any irreparable damage to the stocks.

*Sex Restrictions* - The FMP authorizes an experimental harvest and processing of females when a surplus is determined to be available; otherwise female crabs may not be taken. The surplus would be dependent on the number of crabs above the threshold amount used in the spawning stock calculation of optimum yield. When a surplus of crabs exists, harvest is by state permit if fishermen provide accurate documentation of harvest rates and location, and processing and marketing results are made available to the management agency.

*Pot Limits* - The FMP authorizes the state to use pot limits to attain the biological conservation objective and the economic and social objective of the FMP. Pot limits must be designed in a nondiscriminatory manner. Pot limits are warranted to restrict deployment of excessive amounts of gear to attain the biological conservation objective in the event of pot loss to advancing ice cover that may result in wastage. Pot limits may also be warranted to restrict excessive amounts of gear to allow a small guideline harvest level from a depressed stock to attain the economic and social objective within biological conservation constraints.

*Registration Areas* - The FMP adopts existing state registration areas within the BSAI fishery management unit. The management unit is divided by the state into three king crab registration areas - Bering Sea, Bristol Bay, and Aleutian Islands and one Tanner crab registration area - Westward. Registration areas may be further divided into fishing districts, subdistricts, and sections for purposes of management and reporting. State regulations require vessels to register for fishing in these areas, and may require vessels to register for specific

districts within a registration area. Registration areas may be designated as either exclusive or nonexclusive. Vessels can register for any one exclusive area but cannot fish in any other exclusive area during the registration year. Vessels can fish any or all nonexclusive areas.

*Closed Waters* - The FMP recognizes the current state regulations that prohibit commercial fishing for king crab in waters within 10 miles of mean lower low water around St. Lawrence, King, and Little Diomed Islands. The FMP also recognizes the state closure to protect the Norton Sound subsistence king crab fishery. The state may designate new closed water areas or expand or reduce existing state closed water areas in order to meet state subsistence requirements.

### Category 3 Management Measures

*Reporting Requirements* - Reporting requirements for catchers and processors are important component in achieving the biological conservation, economic, social, research, and management objectives of the FMP.

*Gear Placement and Removal* - Placement of unbaited gear, with doors secured open on the fishing grounds before and after a season, has been allowed within certain limits.

*Gear Storage* - Crab pots are generally stored on land or in designated storage areas at sea.

*Vessel Tank Inspections* - Vessel tank (or live-hold) and freezer inspections are required before the opening of a king or Tanner crab fishing season to meet the legal requirements of the states landing laws, provide effort information, and provide for a fair start to the fishery.

*Gear Modifications* - Pots are the specified legal commercial gear for capturing crab in the BSAI area. An escape mechanism is required on all pots. This mechanism will terminate a pots catching and holding ability in case the pot is lost. Escape areas may be incorporated or mesh size adjusted to allow the escape of nonlegal crabs. Various devices may be added to pots to prevent capture of other species.

*Bycatch Limits* - The state may implement bycatch limits of crab in crab fisheries managed under the FMP.

*State Observer Requirements* - The state may place observers aboard crab fishing or processing vessels to obtain catch, effort, and biological data. The state currently has a mandatory observer requirement on all catcher/processors and floating processors participating in the king, Tanner, and snow crab fisheries as a condition of obtaining a processing permit. It is important that the state observer program and any future federal observer program be coordinated.

*Other* - State government is not limited to only the management measures described in the FMP. Implementation of other management measures not described in the FMP must be consistent with the FMP, the Magnuson-Stevens Act, and other applicable federal laws, and may occur only after consultation with the NPFMC. Other management measures the state may implement are subject to the review and appeals procedures described in the FMP.

THEODORE G. KRONMILLER  
ATTORNEY

601 PENNSYLVANIA AVENUE, N.W.  
SUITE 900, SOUTH BUILDING  
WASHINGTON, D.C. 20004

202/434-8208  
202/639-8238 FAX

July 12, 1999

**MEMORANDUM**

**Alaska Board of Fisheries' Adoption of Proposals to Change the Bristol Bay Red King Crab Season Start Date from November 1 to October 15 and to Provide for Stand-Downs Prior to Crab Seasons (Proposals 287, 291, and 355, as Adopted)**

This comment is submitted on behalf of the Alaska Crab Coalition ("ACC"). The ACC is a nonprofit trade association representing owners of Bering Sea crab fishing vessels. ACC vessel owners are overwhelmingly dependent upon the Bering sea crab fisheries. Accordingly, the ACC strongly supports management measures for the much needed improvement of conservation, safety, and economic conditions in the Bering Sea/Aleutian Islands ("BSAI") crab fisheries.

It is noted that a petition to reconsider and repeal the above-referenced Proposals was filed on behalf of the Yukon Delta Fisheries Development Association, Golden Dawn L.L.C., Harold Jones, Rick Mezich, United Catcher Boats and its members, and Aleutian Spray Fisheries, Inc. on April 23, 1999 ("Petition" and "Petitioners"). The Petition contains allegations that are both inappropriate to this administrative proceeding and evidently intended to inflame the controversy and thus to obscure the legal issues. Notably absent from the Petition are citations to case law that is controlling with respect to critical issues. Formal agency guidance set forth in the Code of Federal Regulations

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and found in legal opinions of the NOAA General Counsel is selectively applied, when referenced at all. Repeated charges by the Petitioners of "little or no evidence" to support adoption of the Proposals are not sustained by the record.

I. Statement of the Facts

During its March 18-27 meeting, the Board of Fisheries ("Board") adopted the following measures that are the subjects of this comment:

- A. Proposal 287 (as adopted), to move the red king crab fishing season start date from November 1 to October 15;
- B. Proposal 291 (as adopted), to implement a thirty-day period when no trawl or pot gear may be fished in Area T prior to the king crab fishing season in that area;
- C. Proposal 355 (as adopted), to implement a thirty-day period when no trawl or pot gear may be fished in Area J prior to the *C. Bairdi* Tanner crab fishing season in that area and to include all trawl gear in the fourteen-day period in this same area prior to the *C. Opilio* Tanner crab fishing seasons; and
- D. Agenda Change Request 27 (ACR 27) (as adopted), to continue authorization of CDQ crab fisheries before the opening of the commercial fishery, if the GHL is at least 50 million pounds. The amount of CDQ harvest which may be used prior to the open access fishery is not to exceed 30 percent of the available CDQ harvest and vessels participating in a preseason CDQ harvest must meet a 14 day gear exclusion.

The decisions taken on the Proposals followed notice, extensive and detailed public testimony and written submissions, and based thereon, Board deliberations. *See* Transcripts of Deliberations (transcribed, State of Alaska, Board of Fisheries); Transcripts, March 24, 1999, Tapes 19B at 257 and 20A at 000 ("Proposal 287"), March 24, 1999, Tape 20B at 000 ("Proposal 291"), March 25, 1999, Tape 25A at 300 ("Proposal 355"), and March 26, 1999, Tape 26A at 354 ("Reconsideration: Proposal 355"), March 25, 1999, Tape 24B at 214, and March 26, 1999, Tape 26B ("ACR 27 Parts I-III"); Calls for Proposals, The Alaska Board of Fisheries, Deadline, April 10, 1998; Comments to Committee D and Committee E, Bering Sea Crab Issues, United Catcher Boats, March 23, 1999; Additional Comments for the Administrative Record on Proposals #291, #354, and #355, Alaska Crab Coalition, March 23, 1999. The administrative record comprising public submissions, other documents, and deliberations of the Board, is discussed below.

## II. Legal Analysis

### A. Applicable Procedures and Authority of the Board

#### 1. Procedures

As shown below, the procedures followed by the Board with respect to the Proposals were as provided by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs ("FMP") and applicable federal and Alaska State law. The decisions of the Board were taken subject to the further procedures as provided in the FMP. FMP, Chapters 9, 10.

In particular, contrary to the assertions of the Petitioners, the Board did not violate the requirement of the FMP by adopting the Proposals before consultation with the North Pacific Fishery Management Council ("Council"). Petition at 6-7. If Proposals 291 and 355 fall within the scope of Category 3, "Other", of the FMP, there is a requirement that such consultation be undertaken before they are implemented.<sup>1</sup> FMP Executive Summary at 4, Chapter 8 at 42. The language is absolutely unambiguous as to this point. Thus, assuming that the requirement applies to any of the Proposals, there is no violation until and unless they have been implemented in the absence of such consultation. The fact is that implementation of the regulations arising out of approval of the Proposals will take place only following not only consultation between the Board and the Council, but also after review of the Petition, adoption of final decisions and findings by the Board, review by the Crab Industry Advisory Committee ("CIAC") with recommendation to the Secretary, and review and approval by the Secretary of Commerce ("Secretary"). FMP Chapter 2 at 8-10, Chapter 9 at 43-44.

On the other hand, it is reasonable to argue that these Proposals properly fall within Category 3, "Gear Placement and Removal". If that argument is accepted, then there is no requirement for consultations in advance of implementation. FMP Executive Summary at 4, Chapter 8 at 41. It is, in fact, the regulation of the placement of gear in the affected fisheries that is the purpose of these Proposals. As is shown below, there is nothing in the FMP that circumscribes the Board's authority in a way that would exclude the gear placement restrictions provided by these Proposals.

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<sup>1</sup> "Implementation of other management measures not described in the FMP must be consistent with the FMP, the Magnuson-Stevens Act, and other applicable federal laws, and may occur only after consultation with the NPFMC." FMP Executive Summary at 4. See Chapter 8 at 42. Proposal 287 falls within Category 2. FMP Executive Summary at 2-3, Chapter 8 at 35-36.



It is also noted that all the Proposals, as originally provided to the Board, were the subject of discussion in the Pacific Northwest Crab Industry Advisory Committee ("PNCIAC") on January 6, 1999, when the PNCIAC addressed items on the agenda of the March 1999 Board meeting. See Minutes of the Pacific Northwest Crab Industry Advisory Committee (PNCIAC) for the March 18-26, 1999 Board of Fisheries Meeting, February 25, 1999 at 4-5. The meeting was noticed and open to the public.<sup>2</sup> At the Joint Council/BOF Committee Meeting, held on March 4, 1999, "[a]mong the issues discussed was the fact that the BOF will be considering crab management issues at the upcoming March session..."<sup>3</sup> Draft Minutes from the Joint Council/BOF Committee Meeting, March 4, 1999 at 3. This meeting, too, was noticed and open to the public. See, for example, NPFMC Newsletter #2-99 at 7. The Board of Fisheries had, in January 1998, called for proposals for its March meeting, and original Proposals 287, 291, and 355 and related proposals were made available for public review before and during that meeting. The Board received public comments on the Proposals, including a letter from United Catcher Boats. See Comments to Committee D and Committee E, Bering Sea Crab Issues, United Catcher Boats, March 23, 1999. In this context, an excerpt from the March meeting of the Board is worthy of particular note:

MR. COFFEY: ...I want the full Board to know that we only had one representative from the trawl industry sitting in ... [the committee meeting] out of 14 or 15 people, but I also want it known that – that although he was not initially a committee member, at the motion of a crabber, he was included as a committee member so we had the opportunity of hearing that point of view and there's – there's certainly a lot of discussion, a lot of disagreement here, but I would like to note that both parties were very courteous to one another in – in a very contentious matter and that because of the actions of the crabbers, the trawler got

<sup>2</sup> Notices dated December 23, 1998 and October 14, 1998.

<sup>3</sup> The context is consideration of the LLP and the numbers of vessels that may be permitted to operate in the BSIA crab fisheries. Notably, this very consideration appeared in the relevant deliberations of the Board. See Transcript Proposal 287 at 20.

heard in committee and – and so that was a – that was a good thing to have done and so for that, we should be thankful to – the folks in the crab fleet.

Transcript Proposal 287 at 22-23.

Thus, the process leading to adoption by the Board of Proposals 287, 291, and 355 (as adopted) were subject to the requisite public review and comment in the several cognizant fora. Moreover, as shown below, the process included exhaustive deliberation by the Board.<sup>4</sup>

## 2. Authority

A further point that deserves particular emphasis is that the authority of the Board to restrict gear is not limited to pots, nor is the Board constrained to adopt no management measures that would collaterally affect groundfish fisheries. The authority of the Board to regulate crab fisheries pursuant to the FMP is provided for the purpose of ensuring that those fisheries are conducted in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, P.L. 94-265, as amended (“Act”), as well as of the FMP itself. BSAI crab fisheries must be regulated so as to ensure their conservation and to comply with other statutory and FMP requirements. Neither the Act, nor the FMP, can be construed to provide that such compliance is not required, if to ensure its achievement, there is an effect on other fisheries, including the groundfish fisheries. While any such effects are properly to be considered in the process of Board deliberations upon the crab management measures, particularly in the context of the National Standards, there is no requirement that those effects be deemed controlling.

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<sup>4</sup> Allegations of violation by the Board of the “cooperative process demanded by the Crab FMP” are entirely without foundation. Petition at 9. Charges of manipulation of the system are belied by the record. Petition at 1-3.

Were the case otherwise, the circumstances of the BSAI crab and groundfish fisheries, which involve many points of commonality, would inevitably lead to an inability of the Board to provide for crab conservation and for the safety of crab fishermen, as well as for other requirements of the law. Notably, the Bering Sea crab fleet not only accepted, but also supported, regulation of pot fishing for groundfish to eliminate prospecting by vessels in that sector.

The regulations set forth in part 679 of title 50 of the Code of Federal Regulations govern commercial fishing for king and Tanner crab in the BSAI, and supersede State of Alaska regulations applicable thereto that are determined to be inconsistent with the FMP. 50 CFR 679.1(g). The Code of Federal Regulations provide that fishing gear requirements for the BSAI crab fisheries are set forth in the Alaska Administrative Code at title 5, chapters 34 and 35. 50 CFR 679.4(b)(4)(iii). The State of Alaska gear regulations for the BSAI crab fisheries, which have long included a provision regulating certain trawl gear, are incorporated by reference in, not superseded by, the federal regulations. *See* 5 AAC 34.625(c).

Any suggestion that Proposals 291 and 355 establish "legal gear" and are, therefore, within the scope of Category 1 of the FMP must be rejected. These Proposals would not make legal what is illegal, nor illegal what is legal, for harvesting FMP crab. Clearly, the FMP contemplates that the Board has authority with respect to many forms of management measures affecting gear. Pot limits appear in Category 2, and gear placement and removal and gear storage appear in Category 3. Indeed, Category 3 "other" may reasonably be interpreted to include further gear regulation measures not otherwise specified expressly in the several Categories. Therefore, the only rational

interpretation of the “legal gear” provision in Category 1 is that it is intended to apply to any case where gear that is currently illegal for harvesting crab would be made legal for that purpose.

Notable, too, is the fact that the FMP does not exclude the regulation of gear other than pot gear. Indeed, the existence of the referenced provision in the State of Alaska regulations, not superseded by the federal regulations, is evidence that no such exclusion exists.

B. Administrative Discretion, the Standard of Judicial Review, and

Interpretation and Application of the National Standards Guidelines

In considering the adoption by the Board of the Proposals, it is important to keep in mind the standards of judicial review. It is well established that the Secretary has broad discretion to make the administrative determination of compliance of the regulations implementing the adopted proposals with the FMP, the Act, and other applicable law.<sup>5</sup> Actions by the Secretary pursuant to the Act are subject to extremely limited judicial review.<sup>6</sup> *Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 109-110 (1<sup>st</sup> Cir. 1997); *Alliance Against IFQs v. Brown*, 84 F.3d 343 (9<sup>th</sup> Cir. 1996), *cert. den.* 1179 S.C. 1467, L.Ed. 2d 681 (1997) at 349-350; *C&W Fish Co. v. Fox*, 931 F.2d 1556, 1562; *Washington Crab Producers, Inc. v. Mosbacher*, 924 F. 2d 1438 (9<sup>th</sup> Cir. 1991) at 1441; *Alaska Factory Trawlers Ass'n v. Baldrige*, 831 F.2d 1456 (9<sup>th</sup> Cir. 1987) at 1460; *State*

<sup>5</sup> The appropriate standard of review, the “arbitrary and capricious test”, pursuant to section 706(2)(A) of the Administrative Procedures Act (“APA”) is found in the Act itself. 16 U.S.C. 1855(f)(1). The FMP provides that the measures adopted by the Board are subject to review by the Secretary for consistency with the FMP, the Magnuson-Stevens Act, and other applicable law. Where the Secretary finds inconsistency, federal regulations are promulgated to supersede the offending state regulations. FMP, Chapter 9.

*of Maine v. Kreps*, 563 F.2d 1052, 1055 (1st Cir. 1977); *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, 773 F. Supp. 435, 439 (D.D.C. 1991); *National Fisheries Institute v. Mosbacher*, 732 F. Supp. 210 (D.D.C. 1990) at 223; *Associated Vessels Services, Inc. v. Verity*, 688 F. Supp. 13, 17 (D.D.C. 1988); *State of Louisiana v. Baldrige*, 538 F. Supp. 625, 628 (E.D. La. 1982); *Pacific Coast Fed'n v. Secretary of Commerce*, 494 F. Supp. 626, 628 (N.D. Cal. 1980).

In *Alliance Against IFQs v. Brown*, *supra*, the Court stated:

Where we review regulations promulgated by the Secretary of Commerce under the Magnuson [-Stevens] Act, our only function is to determine whether the Secretary 'has considered the relevant factors and articulated a rational connection between the facts found and the choice made.' [*Washington Crab Producers, Inc. v. Mosbacher*, 924 F.2d 1438 (9<sup>th</sup> Cir. 1990), at 1440-41]... We determine only if the Secretary acted in an arbitrary and capricious manner in promulgating such regulations. *Id.* at 1441. See also 16 U.S.C. sec. 1855(b)(1)(B); 5 U.S.C. sec. 706(2)(A)-(D). We cannot substitute our judgment of what might be a better regulatory scheme, or overturn a regulation because we disagree with it, if the Secretary's reasons for adopting it were not arbitrary and capricious.

84 F.3d at 345.

There is a necessary tension, perhaps inconsistency, among these [National Standards] objectives. The tension, for example, between fairness among all fishermen, preventing overfishing, promoting efficiency, and avoiding unnecessary duplication, necessarily requires that each goal be sacrificed to some extent in meeting the others.<sup>7</sup>

84 F.3d at 349.

Congress required the Secretary to exercise discretion and judgment in balancing among the conflicting national standards in section 1851 [of the Act]... '[U]nless the Secretary acts in an arbitrary and capricious manner promulgating such regulations, they may not be declared invalid.' *Alaska Factory Trawler Association v. Baldrige*, 831 F.2d 1456, 1460 (9<sup>th</sup> Cir. 1987).

84 F.3d at 350.

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<sup>6</sup> Regulations, not fishery management plans and plan amendments, are subject to judicial review. *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, (D.D.C. 1991), 773 F. Supp. 435, 439.

In *Associated Fisheries of Maine, Inc. v. Daley, supra*, the Court stated:

The Magnuson[-Stevens] Act incorporates the familiar standard of review associated with the Administrative Procedure Act (APA). See 16 U.S.C. sec. 1855(b). Where the APA standard obtains, a court may set aside an administrative action only if that action is arbitrary, capricious, or otherwise contrary to law. See 5 U.S.C. sec. 706(2)(A)-(D). Because the APA standard affords great deference to agency decisionmaking [sic] and because the Secretary's action is presumed valid, judicial review, even at the summary judgment stage, is narrow. [Citations omitted.] Consequently, our brief—like that of the district court—is only to determine whether the Secretary's decision to promulgate the fishery regulation was consonant with his statutory powers, reasoned, and supported by substantial evidence in the record. See *Alliance Against IFQs v. Brown*....[Citations omitted.]

An agency rule is arbitrary and capricious, if the agency lacks a rational basis for adopting it—for example, if the agency relied on improper factors, failed to consider pertinent aspects of the problem, offered a rationale contradicting the evidence before it, or reached a conclusion so implausible that it cannot be attributed to a difference of opinion or the application of agency expertise. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866-67, 77 L.Ed.2d (1983); *Rhode Island Higher Educ. Assistance Auth. v. Secretary of Educ.*, 929 F.2d 844, 855 (1<sup>st</sup> Cir. 1991).

127 F.3d 109.

Having carefully reviewed the record, we cannot say that the Secretary exercised his discretion in an irrational, mindless, or whimsical manner.

127 F.3d 110.

Whether or not we, if writing on a pristine page, would have reached the same set of conclusions is not the issue. What matters is that the administrative judgment, right or wrong, derives from the record, possesses a rational basis, and evinces no mistake of law. Consequently, it merits our approbation. See *State Farm*, 463 U.S. at 43, 103 S.Ct. at 2866-67; *Kreps*, 563 F.2d at 1056.

127 F.3d 111.

In *National Fisheries Institute v. Mosbacher, supra*, the Court stated:

It is especially appropriate for the Court to defer to the expertise and experience of those individuals and entities—the Secretary, the Councils, and their advisors—whom the Act charges with making difficult policy judgments and

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<sup>7</sup> The Sustainable Fisheries Act, in addressing efficiency, amended the referenced National Standard 5 to replace “promote” with “consider”. P.L. 104-297, sec. 106(a).

choosing appropriate conservation and management measures based on their evaluations of the relevant quantitative and qualitative factors. [Citations omitted.]

732 F. Supp. 223.

Concerning interpretation and application of the National Standards Guidelines ("Guidelines"), 50 CFR Part 600, Subpart D, a Legal Opinion of the General Counsel of the National Oceanic and Atmospheric Administration ("NOAA") is instructive:

The national standard guidelines are intended as general statements of policy, and not binding rules. The guidelines leave the Councils wide discretion in preparing FMPs, and the Secretary has similar latitude in the application of the guidelines to individual cases....

Opinion No. 96, Office of the General Counsel, NOAA, July 14, 1982 at 1.

In its Reply Brief in *Washington Trollers Association v. Kreps*, 466 F. Supp. 309 (W.D. Wash. 1979), the United States Department of Justice stated:

All of the fishery management plans approved to date have deviated to some extent from the guidelines. The councils have been repeatedly advised that the regulations were for guidance and were not accorded the same status as binding regulations.

Department of Justice Reply Brief at 6-7.

In *Stinson Canning Company, Inc. v. Mosbacher*, 731 F. Supp. 32 (D. Me. 1990), the Court stated:

The Act called for establishment of ... advisory guidelines, based on the national standards set forth in 16 U.S.C. sec. 1851(a), to assist in the development of fishery management plans. 16 U.S.C. 1851(b). The Act states explicitly, however, that the guidelines shall not have the force and effect of law. *Id.* Failure ... [of the Secretary] specifically to address each of the factors is not, therefore, a violation of law.

731 F. Supp. at 37.

Thus, it is clear that the Secretary has wide latitude to determine that regulations implementing the Proposals are consistent with the FMP, the Act, and other applicable law, and to that end, to interpret and apply the Guidelines. As shown below, the actions of the Board were consistent with the National Standards, and the Secretary should so determine without fear of a successful challenge in court by the Petitioners. The Board should take this into account in reviewing its adoption of the Proposals, and in so doing should especially take into consideration the extensive record of its deliberations in balancing the requirements of the National Standards. See, for example, Transcript Proposal 287 at 11-18, 25-26; Transcript Proposal 355 at 4-6; Transcript Reconsideration: Proposal 355 at 1-2, 6-7; Transcript ACR 27 at 53 and 55.

The FMP provides not only for review by the Secretary, but also for appeal to the Board, and for review by the Courts of the State of Alaska pursuant to the State Administrative Procedure Act. FMP, Chapter 9.<sup>8</sup> The standard of review under State law for Board actions is similar to that under federal law for Secretarial actions. Indeed, if anything, the State standard provides even greater latitude to the Board than the federal standard accords the Secretary. See *Meier v. State of Alaska, Board of Fisheries*, 739 P.2d 172 (Alaska 1987), citing *Kelly v. Zamarello*, 486 P.2d 906, 911 (Alaska 1971).

### C. The National Standards

#### 1. National Standard 1

Section 301(a)(1) of the Act provides:

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<sup>8</sup> The Petition Policy for Category 2 Management Measures in a Bering Sea/Aleutian Islands King or Tanner Crab Fishery appears at 5 AAC 39.998. For Category 3 petitions, 5 AAC 96.625 applies.



Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

16 U.S.C. 1851(a)(1).<sup>9</sup>

“Overfishing” is defined in the Act as, “... a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.” 16 U.S.C. 1802(29). The Guidelines state that, “The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.” 50 C.F.R. 600.310(b).<sup>10</sup> Implementation of the Proposals would contribute to the prevention of overfishing and the achievement of the optimum yield, to the extent that the season change and the gear exclusion provisions would cause a number of trawl vessels to elect to prosecute groundfish fisheries, rather than to enter the affected BSAI crab fisheries. Although the purpose of the Proposals is not to establish an allocation, their implementation would have a remedial effect in these crab fisheries that suffer from excessive capacity levels. Specifically, with excessive fishing capacity on the grounds,

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<sup>9</sup> Petitioners make the remarkable assertion that Proposal “deprives the fleet of the maximum yield”. Petition at 7. The law provides for optimum yield, of which maximum yield is but a component modified by other factors, as defined in the Act.

The term ‘optimum’ yield, with respect to the yield from a fishery, means the amount of fish which—

- (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
- (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor;<sup>9</sup> and
- (C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

16 U.S.C. 1802(28).

<sup>10</sup> The Guidelines elaborate upon the matters relevant to the greatest overall benefit to the Nation as set forth in 16 U.S.C. 1802(28)(A) and the factors set forth in 16 U.S.C. 1802(28)(B). 50 C.F.R. 600.310(f)(2).

management measures may be insufficiently responsive to prevent overharvests. The election of trawl vessels not to prosecute the affected crab fisheries would slow the pace of harvesting. Overfishing would be more avoidable and the optimum yield would be more achievable.

The prevention of prospecting by trawl vessels would also have the positive effect of slowing the pace of the fisheries. Proposals 291 and 355 would ensure that trawl fishermen would not be able to harvest crab at a faster rate, by virtue of having discovered immediately in advance of the crab seasons the locations of greater resource abundance. The Board, in considering the PNCLAC analysis and recommendations, noted that trawling is permitted in Area T right up to the opening of the king crab season. Transcript Proposal 291 at 19.

By definition, this trawl gear is "pelagic".<sup>11</sup> However, this terminology should not be understood to suggest that the gear does not come in contact with the sea floor and thereby avoid the capture of crabs. It is particularly noteworthy that the trawl performance standard related to this definition in fact contemplates that the gear will result in crab being caught.<sup>12</sup> See Amendment 57 Bering Sea/Aleutian Islands Groundfish Fishery Management Plan, Draft for Public Review, Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis of a proposal to Ban Trawling with a Bottom Trawl in Directed Pollock Fisheries of the Bering Sea and Aleutian Islands and Reduce PSC Bycatch, North Pacific Fishery Management Council, May 12, 1998 at section 1.4.1. The use of these trawls can and does, indeed, provide practical information concerning the locations and concentrations

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<sup>11</sup> 50 CFR 679.2.

<sup>12</sup> 50 CFR 679.7(14).

of the crab resource. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis of a Proposal to Ban Trawling with Bottom Trawl in Directed Pollock Fisheries of the Bering Sea and Aleutian Islands and Reduce PSC Bycatch, May 12, 1998, at 13. Importantly, most of the king crab is harvested in areas open to pelagic trawl gear. Testimony of Arni Thomson, Board of Fisheries, March 19, 1999 at 5; Morrison, Bristol Bay Red King Crab Fishery, 1998, Report to the Alaska Board of Fisheries, February 1999 at 5.

In this context, it is particularly important to note that, "Sustainable fisheries is a key theme within the Magnuson-Stevens Act", as amended by the Sustainable Fisheries Act. 62 F.R. 41908, August 4, 1997. The Guidelines reflect a considerable emphasis on the adoption of conservation and management measures that will contribute to sustainability.<sup>13</sup> The predictable effects of implementation of the Proposals would, thus, be consistent with a key theme underlying a central provision of the controlling statute, National Standard I, and of the related Guidelines.

The record of Board deliberations on Proposal 291 addresses the conservation issues. Mr. Engle discussed at length the conservation benefits of Proposal 291, with particular reference to slowing the pace of the fishery and the need to address the issue of manageability, particularly of recovering crab stocks. Transcript Proposal 291 at 10-12. Mr. Morrison, Area Shellfish Management Biologist, Bering Sea/Aleutian Islands, Alaska Department of Fish and Game ("ADF&G"), concurred. *Id.* at 12-13.

Further to the subject of prospecting, Mr. Dersham observed that harvesting success of trawl vessels crossing over into the crab fisheries was surprising to an industry representative. The fact that those vessels' harvests approximated the crab fleet average

suggested that an advantage had been found. On a level playing field, the dedicated crab vessels would have performed significantly better than would the trawl vessels. *Id.* at 7. Furthermore, information on the record suggested performance on crab harvests far in excess of the fleet average.<sup>14</sup> Comments to Committee D and Committee E, Bering Sea Crab Issues, United Catcher Boats at 2. Mr. Nelson noted that considerable enforcement effort had been directed at prospecting, and that “every year it seems like we find several [violators]”. *Id.* at 17-18. Mr. Coffey stated:

Obviously, there is a great advantage to being able to prospect or at least, it seems to be that way, otherwise people wouldn't be doing it year after year after year and Mr. Nelson might be doing other things besides prosecuting prospectors.

*Id.* at 19.

The lack of 100 percent observer coverage is a particularly significant point. The opportunity for prospecting is especially high. This problem was discussed by the Board. *Id.* at 20-21.

The efficiency of trawl gear for harvest of crab is noted in the FMP. Trawling for crab has long been prohibited.<sup>15</sup> FMP Executive Summary at 2. Annual crab surveys by the National Marine Fisheries Service (“NMFS”) are conducted with the use of trawls, due to their efficiency, a point noted by the Board. Transcript Proposal 291 at 7; Morrison, Bristol Bay Red King Crab Fishery, 1998, Report to the Alaska Board of Fisheries, February 1999. *See* Additional Comments for the Administrative Record on Proposals #291, #354 and #355, Alaska Crab Coalition, March 23, 1999 at 1.

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<sup>13</sup> *See, for example*, 50 C.F.R. 600.310 (National Standard 1—Optimum Yield).

<sup>14</sup> The Board was led to believe that 28 vessels in United Catcher Boats averaged 100,000 pounds in 1998, double the fleet average.

<sup>15</sup> *See* Browning, *The Fish and Fisheries of the North Pacific* at 25 (1974).

In the Board's deliberations on Proposal 287, its effect of causing an election between crab and groundfish fisheries for trawl vessels was noted, although allocation was not by design. Transcript Proposal 287 at 7, 16-17, 19, 22-23. This was noted to have a potentially positive conservation effect. *Id.* at 20.

Board consideration of Proposal 287 included concerns regarding overfishing and overcapacity. Transcript 287 at 18 and 20. With regard to Proposal 355, the Board considered conservation, as well.<sup>16</sup> Transcript Reconsideration: Proposal 355 at 9-10 and ACR 27 at 52. The lengthy discussion upon reconsideration took notice of the difference between large, less fragile fisheries, and small, more fragile ones. Conservation was clearly the distinguishing factor in deciding to apply a shorter gear exclusion period for the former and the longer gear exclusion period for the latter. *Id.* at 8-9.

## 2. National Standard 2

Section 301(a)(2) of the Magnuson-Stevens Act provides:

Conservation and management measures shall be based upon the best scientific information available.<sup>17</sup>

16 U.S.C. 1851(a)(2).

The Guidelines for National Standard 2 provide that, "[s]cientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature". 50 C.F.R. 600.315(b)(1).

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<sup>16</sup> See Transcript Proposal 355 at 8. Note the 30-day gear exclusion for pots established for Area A Tanner crab, which was established to prevent prospecting. 5 AAC 35.128.

<sup>17</sup> See section 303(a)(5), (8) of the Act. 16 U.S.C. 1853(a)(5), (8).

The Guidelines also state, "The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP...." 50 C.F.R. 600.315(b). Thus, the absence of some information does not preclude action on the basis of the best evidence that is available. The record shows that the Board acted on the best available scientific evidence. See, for example, Transcript Proposal 291 at 6 and Transcript Proposal 287 at 14. During deliberations on the Proposals, the Board received extensive scientific advice, not only from Mr. Morrison, but also from Dr. Gordon Kruse, Marine Fisheries Scientist, ADF&G and Mr. Wayne Donaldson, Regional Shellfish Biologist, ADF&G, Kodiak.

The deliberations of the Board reflected differing views on the subject of prospecting. However, after considering all the scientific evidence, the Board reasoned that prospecting presented a significant management problem that merited the remedial measures provided by Proposals 291 and 355. It was for the Board to decide what constituted the best scientific evidence available. The judgment of the Board was neither arbitrary nor capricious, nor did it otherwise violate the law. The Board had ample latitude, indeed, the responsibility, to weigh the evidence and decide upon the most appropriate course of action in accordance with the FMP, the Act and other applicable law.<sup>18</sup>

### 3. National Standard 3<sup>19</sup>

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<sup>18</sup> Petitioners seek to characterize certain information as the best available scientific evidence, and they maintain that the Board ignored that information. Petition at 12-13. Petitioners completely ignore the authority and latitude of the Board to assess and apply the available information. In so doing, Petitioners fail to take account of well settled law reflected in section II.B. hereof.

<sup>19</sup> This National Standard was not amended by the Sustainable Fisheries Act. The Guidelines elaborate upon this National Standard, but do not significantly illuminate it. 50 C.F.R. 600.320.

Section 301(a)(3) of the Act provides:

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

16 U.S.C. 1851(a)(3).

According to the Guidelines, the purpose of this National Standard is to “induce a comprehensive approach to fishery management.” 50 C.F.R. 600.320(b). The Proposals reflect a comprehensive approach to fishery management and respond to the National Standard 3 requirement for close coordination, to the extent practicable, among the BSAI crab fisheries and between them and the groundfish fisheries. Board deliberations on the need for the opening date change in Proposal 287 and the gear exclusion periods provided by Proposals 291 and 355 demonstrate compliance with this National Standard.

#### 4. National Standard 4<sup>20</sup>

Section 301(a)(4) of the Act, provides:

Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

16 U.S.C. 1851(a)(4).

##### a. Allocation

The Guidelines provide:

An ‘allocation’ or ‘assignment’ of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable,

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<sup>20</sup> Petitioners’ treatment of this National Standard is especially superficial, and therefore, does not merit a point-by-point response.

discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of [National] Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

50 CFR 600.325(c)(1)

As noted above, the adoption of the Proposals was not for the purpose of allocating fishery resources. However, as is the case with many management measures not having that purpose, the Proposals, when implemented would, to an extent, have that effect.

Both pot and trawl vessels would be subject to the same seasons under Proposal 287, and to the same gear exclusion periods under Proposals 291 and 355. **Both trawl and pot vessels qualified to fish groundfish and crab would need to elect between the groundfish and crab fisheries.** For pot vessels that are dependent upon crab, the choice predictably would be to participate in the crab fisheries. For other vessels, the alternative predictably would be elected. Those remaining in the affected groundfish fisheries and those remaining in the affected crab fisheries would benefit from reduced capacity in each. Only in that manner, and only to that extent, implementation of the Proposals would have the effect of allocating the affected fishery resources.

Thus, it is open to debate whether the Proposals fall within the definition of allocations as provided in the Guidelines. For the purpose of further analysis, the Proposals are assumed to be allocations as so defined. The analysis shows that, given the



assumption, the Proposals are consistent with National Standard 4, a conclusion reached by the Board in the course of its deliberations.

b. Necessity

The objectives of the Proposals include, among others, improved conservation and safety in the BSAI king and Tanner crab fisheries. Transcript Proposal 291 at 11, 12, 13 ; Transcript Proposal 287 at 12, 15, 17, 20, 26; Transcript Proposal 355 at 8; Transcript ACR 27 at 52. Prospecting can result in acceleration of the fisheries, and thus, can make their management within the Guideline Harvest Levels ("GHLs") more difficult. Transcript Proposal 291 at 12, 13. Therefore, in the interest of conservation, the opportunity for prospecting must be eliminated to the extent practicable. The gear exclusion periods provided by Proposals 291 and 355 are necessary to achieve this result. They reflect the fact that the conservation problem is more acute for king and *C. bairdi* fisheries, so to be effective, the gear exclusion period for them is longer than for the *C. opilio* fishery. Transcript Proposal 291 at 10-11, 12, 13; Transcript Proposal 355 at 8; Transcript Reconsideration: Proposal 355 at 6, 9.

Included among the Proposals, which are clearly linked, is an earlier opening for king crab. Proposal 287 has the safety benefit of allowing operations in the brief king crab season to take place when the weather is likely to be less severe than is the case later in the year. Both conservation and safety benefit, where vessels elect to continue their operations in the groundfish fisheries, rather than prosecuting the king crab fishery. Transcript Proposal 287 at 6-7, 15, 17, 20. For the economically depressed crab fleet, the

financial benefits from providing for shorter periods between major fishing seasons are very considerable. Of necessity, these financial benefits require a season change. Given the facts and circumstances of the fisheries, some incidental allocative effects of a season change to achieve these benefits are unavoidable. Transcript Proposal 287 at 19.

c. Fairness and Equity

Courts have ruled, and the National Oceanic and Atmospheric Administration (“NOAA”) General Counsel has opined, concerning the requirement of National Standard 4 that, if allocations are necessary, they be fair and equitable to all United States fishermen. 16 U.S.C. 1851(a)(4). In *National Fisheries Institute v. Mosbacher*, *supra*, the Court stated:

Merely because these provisions [of FMP regulations] have a greater impact on one type of gear user or group of fishermen does not necessarily mean that they violate National Standard 4 [citing *Alaska Factory Trawler Ass'n v. Baldrige*, *supra*, at 1460].

732 F. Supp. at 225.

An opinion of the NOAA Office of General Counsel states:

The phrase ‘fair and equitable’ in Section 301(a)(4)(A) is not defined in the [Act]...or elaborated on in the legislative history. While it is susceptible of countless interpretations, **we suggest that the measure meet, at a minimum, the following standard: the allocation must have a rational basis and must not impose a hardship on one group disproportionate to the benefits received by another group.** [Emphasis added.]

Opinion No. 89, Office of the General Counsel, NOAA, June 2, 1980 at 8.

The Guidelines provide that an allocation “should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective.” 50 C.F.R. 600.325(c)(3)(i)(A). The Guidelines allow that management measures may impose a

hardship on one group, if that is outweighed by total benefits received by another group or groups. 50 C.F.R. 600.325(c)(3)(i)(B). Thus, it is not necessary to show that no group is disadvantaged. In fact, the Guidelines recognize that “[i]nherent in an allocation is the advantaging of one group to the detriment of another.” 50 C.F.R. 600.325(c)(3)(i)(A).

An allocation need not preserve the status quo to qualify as fair and equitable, “if a restructuring of fishing privileges would maximize overall benefits.” 50 C.F.R. 600.325(c)(3)(i)(B). In this regard, it is not necessary to show that the allocation is the only one that is fair and equitable. Not only may there be more than one allocation scheme which could be found fair and equitable, but also, what is fair and equitable may change over time.

The argument is made that implementation of the Proposals would affect trawl vessels more significantly than it would pot vessels. From *National Fisheries Institute v. Mosbacher, supra*, and from the cited Guidelines, it is readily concluded that the Proposals are not necessarily inconsistent with National Standard 4 for this argued disparity of effects. As a whole, the record before, and the deliberations of, the Board amply show that the Proposals are rationally based, and that the hardship on one group is not disproportionate to the benefit to the other group. This meets the test in Opinion 89, *supra*, as well as in the cited Guidelines. Overall benefits, including those for conservation and safety, are maximized as the above-cited, detailed and highly analytical deliberations of the Board reflect.

The Board noted in its deliberations the dependence of crab fishermen on their BSAI crab fisheries. Transcript Proposal 287 at 19. The alternatives open to trawl

vessels were also noted. Transcript Proposal 291 at 9, 10; Transcript 291 at 19-20; Transcript 355 at 6-7.

To the foregoing analysis of fairness and equity should be added some discussion of the financial circumstances, including investment and income, of the affected fishing groups. To achieve their objectives, the Proposals will affect those circumstances.

In the case of the BSAI crab fisheries, which are massively overcapitalized by any rational criterion, the crossover trawl vessels have no dependency, or relatively little, in comparison to the dedicated crab vessels, which are totally, or almost totally, dependent on those fisheries. The investment in gear and related equipment for the crossover trawl vessels is approximately \$159,000. This includes \$125,000 (250 pots x \$500 per pot); pot launcher, \$9,000; and power block, \$25,000. This is a very minor cost for a fully equipped trawl catcher vessel worth an estimated \$2,000,000-\$7,000,000. The investment in a dedicated crab harvester is \$2,000,000-\$5,000,000, and in a dedicated crab catcher-processor is \$5,000,000 to \$10,000,000. See RC 130, Alaska Crab Coalition.

The operators of the crossover trawl vessels may indirectly recover their investment in crab gear from operations in fisheries other than those for BSAI crab. Indeed, for many of the crossover trawl vessels, it may reasonably be assumed that the investments in crab gear have already been directly recovered through speculative participation in the BSAI crab fisheries. By contrast, the operators of the dedicated crab vessels are prohibited from crossing over into any trawl fisheries, and pot fishing for cod provides, as is well known, a very limited financial opportunity that cannot remotely

support the investment in pot vessels. Furthermore, cod is a fully utilized fishery, which cannot economically support a major influx of capacity.

Crossover trawl vessels also enjoy an enormous windfall from the American Fisheries Act, P.L. 105-277. For example, the inshore vessels have received an estimated 37% increase in their pollock quota. No such windfall exists for the dedicated crab vessels. On the contrary, the Act prohibits the dedicated crab vessels from operating in the pollock fisheries. As a result of the enactment of the American Fisheries Act, pollock fisheries will provide a much improved return on the investments in pollock vessels. Moreover, as shown below, in comparison to BSAI crab fishing, pollock fishing has already demonstrated far superior financial performance.

In the groundfish fisheries upon which the affected trawl vessels depend, economic conditions, while somewhat difficult, are superior to those in the BSAI crab fisheries and are already improving, as a consequence of enactment of the American Fisheries Act. Were the case otherwise, a larger number of those vessels would have participated both regularly and recently in the BSAI crab fisheries. Total BSAI groundfish trawl revenues in 1995 and 1996 were \$373,400,000 and \$332,500,000, respectively.<sup>21</sup> The BSAI trawl groundfish average ex vessel revenues in 1995 and 1996 were \$2,062,983 for 181 vessels and \$1,731,770 for 192 vessels, respectively. *See* Economic Status of the Groundfish Fisheries Off Alaska, 1996, Socioeconomic Task, November 21, 1997. By contrast, the average Bering Sea crab vessel revenue has, for the past two years, been in the area of \$600,000 (of which the net has been approximately \$9,000). RC 130, Alaska Crab Coalition, Attachments, "Average Bering Sea Crab Vessel Break Even Analysis Based on Current \$600,000 Average Gross Revenue". As a

percentage of average pollock vessel revenues, crab averaged 4.8% for the years, 1995-1997. RC 130, Alaska Crab Coalition, Attachment, "Crab Revenue & S.1221 Crossover Vessel Dependence Upon Crab".

In addition, the fisheries upon which the trawl vessels depend do not face the severe conservation and safety problems confronting the BSAI crab fisheries. The groundfish fisheries are not depressed. This is, of course, a major consideration.

Fairness and equity in the management of a fishery necessarily includes the avoidance of economic harm to vessels that are dependent upon it. The financial condition of the average, dedicated crab vessel is tenuous. Management measures that only marginally affect the trawl vessels may make the difference between economic survival or failure for the dedicated crab fleet. For the trawl vessels, income from crab fishing is supplemental "icing on the cake". Transcript Proposal 355 at 6-7. For the dedicated crab vessels, that income is indispensable. Transcript Proposal 291 at 10.

c. Discrimination

The statutorily proscribed discrimination is that based on state of residence. 50 C.F.R. 600.325(b). In particular, an FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state.<sup>22</sup> This conforms with the Privileges and Immunities Clause of the United States Constitution, which provides, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const., Art. 4, Sec. 2.

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<sup>21</sup> This decrease was not due to resource conditions, but was a consequence of the market.

<sup>22</sup> 50 C.F.R. 600.325(b). This view was reflected in the U.S. Department of Justice Memorandum in Support of Defendant's Opposition to Plaintiff's Cross Motion for Summary Judgment at 13, *Alaska Factory Trawler Association v. Baldrige*, *supra*.

This does not mean that an FMP, while not so discriminating, may not have different effects on persons from various geographical locations, provided that those measures satisfy the other Guidelines relating to National Standard 4. 50 C.F.R. 600.325(b). In the landmark case, *Alaska Factory Trawler Association v. Baldrige*, *supra*, cited as controlling authority in *Alliance Against IFQs v. Brown*, *supra*, the Court stated:

[The FMP amendment]...will benefit all long-line [sic] fishermen, not just those that are residents of Alaska. Even though there may be some discriminatory impact from [the FMP amendment]...the regulations satisfy the requirements of National Standard 4 in that they are tailored to solve a gear conflict problem and to promote conservation of sablefish.

831 F. 2d 1460.

The Court in *Alliance Against IFQs v. Brown*, *supra*, stated, "The Secretary is allowed, under this authority [*Alaska Factory Trawler Ass'n v. Brown*, *supra*], to sacrifice the interests of some groups of fishermen, for the benefit of the fishery as a whole." 84 F.3d 350.

Implementation of the Proposals would have different effects on fishermen from different states, as noted in the deliberations of the Board, but would not discriminate on the basis of state residence. Transcript Proposal 291 at 3; Transcript Proposal 287 at 19; Transcript Reconsideration: Proposal 355 at 6-7; Transcript ACR 27 at 52. The objectives of improved economic, resource, and safety conditions in the affected fisheries that underlie, and would be promoted by, implementation of the Proposals are both legitimate and important, as discussed by the Board and herein. The proscribed discrimination is not present in the Proposals.

e. Conservation

A further National Standard 4 requirement for judging an allocation is that it be “reasonably calculated to promote conservation.” 16 U.S.C. 1851(a)(4)(B).

Conservation is assigned a very broad meaning. For example, the Guidelines state:

An allocation scheme may promote conservation by encouraging a rational, more easily managed use of resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product.

50 C.F.R. 600.325(c)(3)(ii).

In *National Fisheries Institute v. Mosbacher*, *supra*, at 439-440, the Court stated:

As the Court has repeatedly held today, the provisions challenged in this suit—and the ensuing advantages for recreational fishermen—are necessary and rationally related to the FMP’s legitimate objective of conserving billfish while also providing the greatest overall benefit to the nation.

Excess harvesting capacity in the BSAI red king crab fisheries resulted in harvests for the 1996/1997 and 1997/1998 seasons that exceeded the GHGs. By definition, this presented a conservation problem. In view of the fragile condition of the red king crab resource, which has forced closed seasons in recent years, the conservation problem presented by exceeding GHGs must be regarded as serious, even if improvement is expected. The *C. bairdi* fishery is overfished. The enormous excess of fishing capacity presents a conservation challenge to the *C. opilio* fishery, as well. Transcript Reconsideration: Proposal 355 at 6-9.

Because reduction of capacity in the affected crab fisheries and prevention of prospecting by trawler vessels would slow the pace of the red king crab fisheries implementation of the Proposals would improve the ability of fisheries managers to constrain the harvest within the GHGs. The risk of exceeding GHGs would be contained



or reduced in the same manner for the affected Tanner crab fisheries. See discussion, *supra*.

Deadloss and meat fill issues were thoroughly discussed by the Board. The conclusion was that Proposal 287, the only proposal relevant to this issue, would not affect those conservation factors significantly in relation to the status quo. Transcript Proposal 287 at 2-5, 7-16, 26. Moreover, in properly balancing the FMP objectives and National Standards, deadloss was but a single factor to be weighed with the others.<sup>23</sup>

The Board considered bycatch, and some benefit from the Proposals in that regard was identified. The issue of bycatch is more fully addressed in the discussion of National Standard 9, below.

f. Excessive Shares

The Guidelines interpret the test for judging an allocation under National Standard 4, that “no particular individual, corporation, or other entity acquires an excessive share of [the fishing] privileges.” 16 U.S.C. 1851(a)(4)(C).

An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

50 C.F.R. 600.325(c)(3)(iii).

An issue of excessive shares was raised with respect to Amendment 8 to the Surf Clam FMP. Plaintiffs alleged market concentration in specific companies, not in a class of users. Despite allegations that two fishermen already controlled 40% of the quohog

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<sup>23</sup> Petitioners utterly ignore, in their discussion of deadloss, that settled law provides for a balancing of various provisions of the National Standards. Petition at 8. No single factor is controlling.

quota and that further consolidation could be expected, the Court upheld the FMP. The Court stated:

...the Act contains no definition of 'excessive shares,' and the Secretary's judgment of what is excessive in this context deserves weight, especially where the regulations can be changed without the permission of ITQ holders.

*Sea Watch International v. Mosbacher*, 762 F. Supp. 370, 380 (D.D.C. 1991).<sup>24</sup>

If a number of trawl vessels elect, as expected, to participate in the groundfish fisheries, instead of in the affected crab fisheries, implementation of the Proposals would have the effect of increasing the share of fishing privileges enjoyed by those continuing to participate in the crab fisheries. However, it is obvious that, in view of the number of participants in the crab fisheries, the effect of the Proposals on the share of any particular entity would be insignificant. Transcript Proposal 291 at 8; Transcript Proposal 355 at 5. That effect would not remotely approach what eventuated in the circumstances that led to *Seawatch v. Mosbacher, supra*.

Notably, implementation of the Proposals would not disturb the ownership caps provided in the LLP. These caps have as their purpose the prevention of excessive shares.

g. Summary for National Standard 4

Thus, summarizing National Standard 4, a fishery management measure may treat different fishermen differently, if impermissible discrimination among residents of

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<sup>24</sup> "In considering what is an excessive share, the Secretary has found that the determination of shares in the fishery is to be based on how the fishery is initially divided. The Act does not intend that secondary economic forces in the aftermarket, which might concentrate the [surf clam] quota in a few individuals, must be prevented...."

different states is avoided, and if the allocation scheme is fair and equitable, reasonably calculated to promote conservation, carried out in manner that no particular entity receives an excessive share of the fishing privileges, rationally related to achievement of the optimum yield, and serves the objectives of the relevant FMP, and is consistent with the National Standards.

The Proposals comply with these requirements. Fairness and equity would be preserved by preventing prospecting and by eliminating avoidable costs to the crab fleet. It would be unfair to allow prospecting by trawlers and to perpetuate avoidable costs for the dedicated crab fleet in order to serve the interests of some trawl vessels in supplementing their groundfish income with crab landings. Moreover, conservation would be promoted, no particular entity would receive an excessive share, the optimum yield would be more readily achieved, and important objectives of the National Standards, including promotion of safety, would be served.

#### 5. National Standard 5

Section 301(a)(5) of the Act provides:

Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

16 U.S.C. 1851(a)(5).

#### a. Efficiency

This National Standard was amended by the Sustainable Fisheries Act to substitute the term, "consider", for the term, "promote". P.L. 104-297, section 106(a).

The amendment was adopted by the Senate Committee on Commerce, Science, and Transportation, in the markup of S.39, the Sustainable Fisheries Act. (The House committee of jurisdiction did not adopt this amendment, nor was this considered on the House Floor as a separate amendment.) The Report of the Senate Committee on Commerce, Science, and Transportation on the S.39, states, in explaining the amendment:

In the past, this national standard has been used to, among other things, justify ecologically wasteful, but economically efficient practices such as roe stripping. The goal of this amendment is not to eliminate efficiency as a consideration in the development of plans and regulations, but rather to ensure that it is balanced with the requirements of other national standards.

S. Rpt. 104-276 at 13.

In *Alaska Factory Trawler Association v. Baldrige*, *supra*, plaintiffs argued that regulations failed the then efficiency test, because the selected management alternative was not the most efficient in terms of harvesting. Without commenting on the efficiency argument, the Court ruled that the regulations did not violate National Standard 5.

However, the Justice Department did address the issue, as follows:

The maximization of technical efficiency (e.g., catching the most fish in the shortest time with the least expenditure of money and effort) is not synonymous with the maximization of overall benefits to the fishery and the nation. The regulations interpreting National Standards 4, 5, and 7, when read together, reflect a sensible balance of economic, social, and biological factors in the evaluation of FMPs. [Footnote omitted.] Efficiency in terms of benefit to the nation as a whole is an amalgamation of numerous considerations, of which technical efficiency is only a component part. To the degree, for instance, that management measures discourage overcapitalization, congestion, and excess effort targeted on too small a resource base, overall benefits are enhanced and general efficiency is achieved.

Brief for Federal Appellee at 41-42, *Alaska Factory Trawler Association v. Baldrige*, *supra*.

The substitution of the term, "consider", for the term, "promote," would affect the balance at work, here, by placing somewhat less emphasis on efficiency, relative to other factors addressed in the National Standards.

The Guidelines provide some explanation of this National Standard, in the specific context of allocations. Significantly, the Guidelines state, "An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency." 50 C.F.R. 600.330(b)(2)(i). "Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable." 50 C.F.R. 600.330(b)(1).

The Board considered issues of efficiency. *See, for example*, Transcript Proposal 287 at 15. The change in the season for red king crab, as provided by Proposal 287, arguably would impair the efficiency, if defined as maximum utilization, of trawl vessels, by compelling elections between participation in the groundfish and crab fisheries. Transcript Proposal 287 at 17, 18, 22. This would be offset by the increased efficiencies provided by Proposal 287 through reduced down time between crab fishing seasons. Transcript Proposal 287 at 12-13. This calculus must take into account the fact, noted above and in the course of the Board deliberations, that the dedicated crab vessels may not cross over into groundfish fisheries, while the trawlers have the choice between those fisheries under the new regime adopted by the Board. *Id.* Also to be considered is the relative financial strength of the two groups. Increased efficiencies to the dedicated crab fleet can mean the difference between survival and failure in the present and foreseeable, marginal economic circumstances. For the trawl vessels, any loss of efficiency must be measured against their overall superior financial strength and greater economic

opportunities, including the benefits accorded by the American Fisheries Act in terms of increased fishing quota.

As regards Proposals 291 and 355, it would be perverse to argue that the prevention of prospecting would decrease efficiency. Prospecting is an unfair activity that has adverse implications for conservation and safety, especially in overcapitalized fisheries that are conducted during short seasons and in difficult environmental conditions.

b. Economic Allocation

As regards proscribed economic allocation, the Guidelines state:

This [national] standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives.

50 C.F.R. 600.330(e).

In *Alaska Factory Trawler Association v. Baldrige*, *supra*, the Court stated:

The record shows that the Secretary considered several non-economic objectives in promulgating the regulations and that the measure was not adopted solely for economic reasons. In consequence, the Secretary could reasonably conclude that [the plan amendment]... does not violate National Standard 5....<sup>25</sup>

831 F.2d at 1460.

In *Sea Watch International v. Mosbacher*, *supra*, the Court stated:

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<sup>25</sup> Plaintiffs attempted to attach a misleading interpretation to a statement of Senator Ted Stevens on the Floor of the Senate during consideration of S. 961. *Legislative History, supra*, at 345. His *amicus* brief in the case disposed of plaintiffs' interpretation suggesting that the Councils were intended not to take economic considerations into account. Memorandum of Senator Ted Stevens as *Amicus Curiae*, *Alaska Factory Trawler Association v. Baldrige, supra*.

Where the Secretary considered and relied upon... noneconomic objectives, when reviewing and promulgating regulations, there is no violation of National Standard 5. *See Alaska Factory Trawler Ass'n v. Baldridge*, 831 F.2d 1456, 1465 (9<sup>th</sup> Cir. 1987).

762 F. Supp. at 22.

Clearly, the record before the Board and of its deliberations reflects that economic allocation was not an objective, much less the sole purpose, of the Proposals, although there would be a collateral effect on allocation of resources. Transcript Proposal 287 at 18-19. The record as a whole of Board deliberations clearly reflects the fact that other objectives, including conservation and safety, were at the foundation of the decision to adopt the Proposals.<sup>26</sup>

#### 6. National Standard 6<sup>27</sup>

Section 301(a)(6) of the Act provides:

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

16 U.S.C. 1851(a)(6).

The Guidelines note that "... variations arise from biological, social, and economic occurrences, as well as from fishing practices." 50 C.F.R. 335(c)(1). The Guidelines also note that "[e]conomic uncertainty may involve [*inter alia*]... drifts toward overcapitalization and economic perturbations caused by changed fishing patterns." *Id.*

The Guidelines state that management measures should include some protection against uncertainties in the fisheries, and should, to the extent practicable, provide a

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<sup>26</sup> In light of the record of Board deliberations, one wonders at how the Petitioners can assert that "...[P]roposals 291 and 355 violate the admonition of national standard 5 [sic] that no measure shall have economic allocation as its sole purpose. Petition at 14.

suitable buffer in favor of conservation. 50 C.F.R. 600.335(b), (c)(2). The Guidelines refer to economic, technical, biological, social, and other uncertainties. 50 C.F.R. 600.335(c)(1). The Guidelines provide that FMPs should have flexibility to meet contingencies. 50 C.F.R. 600.335(b), (d).

The Proposals are constructive responses to the uncertainties of the affected fisheries, including the risks associated with the continued opportunity for prospecting under the status quo, and the particularly severe management uncertainty in the overcapitalized crab fisheries. By eliminating a major opportunity for prospecting, and thus reducing the risks associated with accelerated fisheries, the uncertainty regarding the avoidance of exceeding the GHGs would be reduced. The significance of this uncertainty is reflected by the fact that, in November 1998, of the 271 vessels in the crab fishery, 43 were trawlers (15% of the participants) that were not prevented from prospecting.

By slowing the fisheries, and by thus improving the opportunity for achieving the optimum yield (subject to remaining, uncontrollable variations and contingencies, such as climate conditions affecting resource behavior and abundance), implementation of the Proposals would create a buffer in favor of conservation. Reducing the number of vessels in the BSAI crab fisheries as a consequence of election by some trawl vessels to remain in their groundfish fisheries would improve management flexibility. In addition, the uncertainty to those participants dependent on the BSAI crab fisheries would be reduced by removal of the instability associated with the entry and exit of a number of trawl vessels that are dependent on other fisheries. See discussion, Transcript Reconsideration: Proposal 355 at 6, 8.

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<sup>27</sup> This National Standard was not amended by the Sustainable Fisheries Act.



7. National Standard 7<sup>28</sup>

Section 301(a)(7) of the Act provides:

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

16 U.S.C. 1851(7).

In relation to National Standard 7, the Guidelines provide that “[m]anagement measures should not impose unnecessary burdens on the economy, on individuals, or private or public organizations, or on Federal, state, or local governments.” 50 C.F.R. 600.340(c). A cost-benefit approach is to be employed, although not necessarily by formalistic analysis.<sup>29</sup> An evaluation is to be made of effects and costs, especially of differences among workable alternatives, including the status quo. 50 C.F.R. 600.340(d).

Costs were considered by the Board in the course of its deliberations. It was concluded that there would be cost savings to those engaged in the crab fisheries, and that enforcement and management costs would be favorably affected. Transcript Proposal 291 at 3, 14; Transcript Proposal 287 at 12-13; Transcript Proposal 355 at 10; RC 132, United Catcher Boats. As observed above, the potential costs to some trawlers electing to stay in the groundfish fisheries would be outweighed by the benefits to the participants in the crab fisheries and by other benefits from implementation of the Proposals. RC 130, Alaska Crab Coalition.

8. National Standard 8<sup>30</sup>

<sup>28</sup> This National Standard was not amended by the Sustainable Fisheries Act.

<sup>29</sup> Petitioners allege that the Board “engaged in no quantitative analysis regarding proposal 287, further condemning its validity.” Petition at 8. The discussion of this National Standard adds little. Petition at 25. The law does not require a “quantitative analysis”. The Board specifically considered the cost issue, and in so doing, focused on RC 132, the United Catcher Boats’ written submission. Transcript Proposal 287 at 22.

<sup>30</sup> See section 303(a)(9)(A) of the Act, which requires fishery impact statements, to include, *inter alia*, consideration of fishing communities. 16 U.S.C. 1853(a)(9)(A).

Section 301(a)(8) of the Act provides:

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

16 U.S.C. 1851(a)(8).

“Fishing community” is defined by the Act, as follows:

... a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States processors that are based in that community.

16 U.S.C. 1801(16).

The legislative history of the Sustainable Fisheries Act includes considerable interpretative treatment of this National Standard. Reference is made to the Report of the Senate Committee on Commerce, Science, and Transportation, which included this provision in S.39, as reported to the Senate. S. Rpt. 104-276 at 13-14. The provision, and the definition of fishing communities, were debated and amended in the course of Senate Floor consideration of the bill. *Congressional Record*, September 18, 1996 at S10814, S10815, S10818. Senator Murray addressed the provision, as passed in the Senate and ultimately enacted into law:

This definition [of fishing communities in the Manager’s Amendment for Senate consideration] recognizes that fishers are fishers no matter where they live. An individual fisher and his or her family, whether they work on a big boat and or [sic] a small boat, are equally dependent upon the fish for their livelihoods no matter where they live. The fisher from a small New England port, an Alaskan coastal town, or a metropolitan area like Seattle all make their living from the sea, their lives are all tied to the health and abundance of the fish they catch. They all deserve to be considered when difficult and painful fishery management practices need to be implemented. Under this bill, they will be.

*Congressional Record*, September 18, 1996 at S10815.

The Guidelines extensively address this National Standard. They provide, in effect, elaboration of the Guidelines addressing social considerations pursuant to provisions of the Act predating the Sustainable Fisheries Act. 50 C.F.R. 600.345.<sup>31</sup>

The Guidelines state, "This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community." 50 C.F.R. 345(b)(2). "Any particular management measure may economically benefit some communities while adversely affecting others." 50 C.F.R. 600.345(c)(4). The Guidelines for this National Standard address social and economic considerations. Among other things, "[a] discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law." 50 C.F.R. 600.345(c)(5).

The Guidelines further state:

Deliberations regarding the importance of fishery resources to affected fishing communities... must not compromise the achievement of conservation requirements and goals of the FMP... All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes adverse economic impacts on such communities would be the preferred alternative.

50 C.F.R. 600.345(b)(1).

"Sustained participation means continued access to the fishery within the constraints of the condition of the resource." 50 C.F.R. 600.345(b)(4).

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<sup>31</sup> See 50 C.F.R. 600.310(f), 600.315(b), (c), (e), 600.325(c), 600.330(b)-(e), 600.335(b)-(d), 600.340(b)-(d).

The Board carefully considered the interests of affected communities, including those that benefit from community development quotas ("CDQs"), and the Board ensured that CDQ-eligible communities, for which specific statutory allocations have been provided, would not be adversely affected by implementation of the Proposals. See, for example, Transcript Proposal 291 at 22-25; Transcript ACR 27 at 29-30; Transcript Reconsideration Proposal 355 at 6, 7; Transcript ACR 27 at 53, 54.<sup>32</sup> However, the record is clear that Proposals have neither the purpose, nor the effect, of allocating resources to specific communities, nor of providing preferential treatment based on residence in a fishing community. In the BSAI crab fisheries, any immediate, adverse impacts associated with fewer participants from particular communities would be offset by improved economic conditions for other communities arising out of better conserved, safer, and financially sounder BSAI crab fisheries. More sustainable crab fisheries would contribute to the sustained participation of dependent communities.

The last point merits elaboration. Implementation of the Proposals would increase the value of the BSAI crab fisheries to communities, by leading to steadier employment, both at sea and on shore, through earlier, lengthier, and more stable fishing seasons than would otherwise prevail. In addition, mitigation of the pressures on BSAI crab resources would protect the economic returns to the communities in which the dependent vessel owners, crews, and shoreside processing plant workers reside, and to which deliveries of the crab make important economic contributions. Implementation of these Proposals would, to the extent practicable, contribute to the minimization of adverse economic impacts on communities resulting from poor conditions in the crab

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<sup>32</sup> One wonders at the Petitioners' charge that, "Additionally, there is absolutely no discussion in the available record to indicate the Board considered the potential impact of the Proposals on coastal

fisheries. Improved safety in these most dangerous fisheries would benefit social conditions in the affected communities.

The benefits to communities of implementation of the Proposals would by no means compromise conservation. Instead, as observed above, approval and implementation of the Proposals would result in improved conservation. Also as noted, by slowing the pace of the fisheries, implementation of the Proposals would lessen the risk that harvests would exceed the GHGs. By preventing prospecting, precautionary management would be more achievable.

#### 9. National Standard 9

Section 301(a)(9) of the Act provides:

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.<sup>33</sup>

16 U.S.C. 1851(a)(9).

For commercial fisheries, such as those to the Proposals apply, "bycatch" is defined in the Act as "... fish which are harvested in a fishery, but which are not sold or kept for personal use and includes economic discards and regulatory discards..." 16 U.S.C. 1802(2). "Economic discards" are defined in the Act as "... fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons." 16 U.S.C. 1802(9). "Regulatory discards" are

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communities." Petition at 11.

<sup>33</sup> "Any fishery management plan... shall—include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided..." 16 U.S.C. 1853(a)(11). This provision first appeared in P.L., 104-297, section 108(a)(11), as did the definitions quoted above (section 102(2),(9),(33)). A policy of the Act is "to assure that the national fishery conservation and management program... encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish..." 16 U.S.C. 1801(c)(3). See 16 U.S.C. 1853(b)(10).

defined in the Act as "...fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell." 16 U.S.C. 1802(33).

Congressional interest and intent with respect to bycatch reduction was clearly reflected in the Senate and House Floor debates in the 104<sup>th</sup> Congress.<sup>34</sup> Senator Stevens declared that, "Under S.39, the councils will...be required to reduce the amount of bycatch in every fishery around our country." *Congressional Record*, September 18, 1996 at S10810. He also stated, "We thought Americanization would go a long way toward conserving the fishery resources of this Nation. Foreign vessels have now given way to U.S. vessels that are capitalized now far beyond what we ever envisioned in the seventies, and the fisheries waste continues to get worse in many areas." *Id.* Senator Murkowski stated, "This will put us on the road to stopping the shameful waste that is currently occurring in many fisheries." *Id.* at S10820. Senator Gorton remarked, "...I join my colleagues in lauding those provisions that aim to reduce waste and bycatch in the fisheries...." *Id.* at S10814.

On the House Floor, Congressman Young, principal author of H.R. 39, and chairman of the committee of jurisdiction, stated, "The reduction of bycatch in our fisheries is one of the most crucial challenges facing fisheries managers today." *Congressional Record*, September 18, 1995 at H9116. On passage of S. 39, he stated, "...the bill recognizes that bycatch is one of the most pressing problems facing the continuation of sustainable fisheries...." *Congressional Record*, September 27, 1996 at H11438.

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<sup>34</sup> See S. Rpt. 104-276, May 23, 1996 and H. Rpt. 104-171, June 30, 1995.

The Guidelines address National Standard 9 in a detailed manner.

The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses.

50 C.F.R. 600.350(d).

Considerations include, “[n]egative impacts on affected stocks; incomes accruing to participants in the directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of the bycatch species; and impacts on other marine organisms.” 50 C.F.R. 600.350(d). *See* 50 C.F.R. 600.350(d)(3)(I).<sup>35</sup> When faced with uncertainty in considering the relevant factors, the precautionary approach adopted by the United Nations Food and Agriculture Organization should be employed. 50 C.F.R. 600.350(d)(3)(ii).

Implementation of the Proposals would be important to bycatch reduction. As was recognized during the deliberations of the Board, crabs caught in the process of prospecting clearly fit within the definition of bycatch. Proposals 291 and 355 would eliminate the bycatch resulting from prospecting in the affected fisheries. Transcript Proposal 291 at 6, 20; Transcript Proposal 355 at 5.

The affect of implementing the Proposals, including Proposal 287, on capacity in the crab fisheries is relevant to bycatch. Overcapitalization is well recognized as a cause of bycatch waste. The NOAA Fisheries Strategic Plan, May 1997 (“Strategic Plan”), states, “...we will focus on reducing sources of waste such as overcapitalization.” “In the

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<sup>35</sup> The Guidelines refer to the councils in this and other contexts. However, by virtue of the FMP, they apply to actions of the Board with respect to the federal BSAI crab fisheries.

next five years, NOAA Fisheries will...[m]inimize bycatch to the extent practicable, and minimize mortality of unavoidable bycatch....” Strategic Plan at 12. Michael Sissenwine, senior scientist of the NMFS, has noted overcapitalization as a cause of waste in the fisheries.<sup>36</sup> A Report of the U.N. Food and Agriculture Organization states:

There is growing global recognition that the world’s fishing effort already exceeds what is necessary to harvest sustainable yields of marine fish. The single action that will provide the greatest improvement to the bycatch and discard problem in certain fisheries is the reduction of these effort levels. Without such control, other solutions to the bycatch and discard problem will be less effective, and real success in efforts to better manage the ocean’s resources will be more difficult to attain.<sup>37</sup>

By slowing the pace of the affected crab fisheries, implementation of the Proposals would result in improved handling of juvenile and female crab. Increased soak time would contribute to fewer juvenile crab being raised in the pots and, thereby, would decrease juvenile mortality. This would thus help minimize bycatch and minimize the mortality of bycatch that could not be avoided.

Finally, the Board considered at length the issue of deadloss. The impact of Proposal 287, in the context of which this issue arose, was found to be insignificant, and to be outweighed, in any case, by other considerations required by the FMP and the Act. Transcript Proposal 287 at 2-3, 8, 10, 11, 12, 15, 16, 25.

#### 10. National Standard 10

Section 301(a)(10) of the Act provides:

Conservation and Management measures shall, to the extent practicable, promote the safety of human life at sea.

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<sup>36</sup> Sissenwine and Rosenberg, *Marine Fisheries at a Critical Juncture*, *Fisheries*, Vol. 18, No. 10 at Figure 11.

<sup>37</sup> Everett, *Fisheries Bycatch and Discards: A Report from FAO*, *Solving Bycatch: Considerations for Today and Tomorrow* at 280 (see Endnotes)



16 U.S.C. 1852(a)(10).

This National Standard, like the one pertaining to bycatch, was enacted in the Sustainable Fisheries Act.<sup>38</sup> Floor statements and committee hearings reflected enormous concern for the safety of fishermen, especially where excessive capacity had led to intense races for fish. Senator Murray, in her statement during debate on S.39, addressed the safety issue, as follows:

...[T]his race for fish creates serious safety considerations in many fisheries. Under this race, fishers feel compelled to keep fishing even when the weather or conditions of the vessel or health of the captain or crew would suggest otherwise. Unless fishery management plans provide opportunities and incentives for fishers to sit out storms and return to port for repairs or medical attention, lives will continue to be lost... **The crab fishery of the North Pacific is the most dangerous occupation in the Nation....**

**For this very reason we included promotion of safety of life at sea in the National Standards of the Magnuson Act.** [Emphasis added.]

*Congressional Record*, September 18, 1996 at S10818.

The Guidelines observe that fishing is an “inherently dangerous occupation” and that National Standard 10 “...directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management.” 50 C.F.R. 600.355(b)(1). It is noted that, “the safety of the fishing vessel and the protection from injury of persons aboard are considered the same as ‘safety of human life at sea’”. 50 C.F.R. 600.355(b)(3).

Particularly relevant is the following:

Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often called ‘derby’ fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad

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<sup>38</sup> P.L. 104-297, section 106(b)(10).

weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes....

50 C.F.R. 600.355(c)(3).

The Guidelines state that, "This standard is not meant to give preference to one method of managing a fishery over another." 50 C.F.R. 600.355(b)(1). However, the Guidelines set forth examples of mitigation measures that could be considered. These include limiting the number of participants in the fisheries, spreading effort over time and area to avoid potential gear and/or vessel conflicts, and implementing management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety. 50 C.F.R. 600.355(e)(6), (7), (8).

The Guidelines provide a "non-inclusive" list of what should be considered in evaluating management measures under National Standard 10. These are: Operating environment, gear and vessel loading requirements, and limited season and area fisheries. 50 C.F.R. 600.355(c)(1)-(3).

It has been observed that Bering Sea/Aleutian Islands crab fishing is the most dangerous occupation in the United States.<sup>39</sup> Clearly, this situation is causally connected to the excessive number of vessels operating in those fisheries. In view of the circumstances of the BSAI crab fisheries, the Proposals demonstrably fit among the Guidelines' examples of appropriate mitigation measures.

The operating environment for Bering Sea/Aleutian Islands crab fishermen is a critically important consideration. Providing for an earlier start in accordance with Proposal 287, would have benefits in terms of somewhat milder weather conditions for

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<sup>39</sup> Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Division of Safety Research, Alaska Field Station, November 4, 1997.

the king crab fishery. Transcript Proposal 287 at 12, 15, 16, 26. By allowing fishermen more time in which to harvest the resource, and thus, a better opportunity to avoid fishing in dangerous weather conditions, the Proposals would also contribute to safety.

Gear and vessel loading requirements in these fisheries are also a major consideration. By achieving longer seasons through reduced capacity, the Proposals would allow safer handling of the heavy pot gear and reduce dangers to vessel stability.

#### E. Achievement of FMP Objectives

The Guidelines applicable to National Standard 4 provide that allocations should be rationally related to the achievement, not only of the optimum yield, but also of other, legitimate FMP objectives. 50 C.F.R. 600.325(c)(3)(i)(A).

The foregoing discussion of the Proposals in light of the National Standards, upon which the FMP is based and with which it must be consistent, need not be repeated in detail, here. Rather, it is necessary only to recall briefly the relevant aspects of that discussion.

The FMP provides:

The management goal is to maximize the overall long-term benefit to the nation of Bering Sea/Aleutian Island [sic] stocks of king and Tanner crabs by coordinated Federal and State management, consistent with responsible stewardship for conservation of the crab resources and their habitats.<sup>40</sup>

The adoption by the Board of the Proposals complies with the management goal, by fulfilling the conservation and management responsibility delegated to the State of Alaska for the BSAI crab fisheries. By having painstakingly considered the National

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<sup>40</sup> Summary of Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (Revised 2/14/94) at 4.

Standards and the FMP during deliberations on the Proposals, the Board performed the most crucial aspect of coordination with federal management. The Board met with the Council prior to the meeting at which the Proposals were adopted. The agenda of the Board and the public record for the meeting at which the Proposals were considered were available to the Council, as well as to officials of the Commerce Department.

Proceedings of the Board were open to the participation of federal officials as contemplated by the FMP. The degree of consideration of the Proposals by the Council and Commerce Department officials was solely a matter for them to decide. The Board had no reason to insist upon Council consideration of the Proposals, nor could the Board compel participation by Commerce Department officials.

By focusing in its discussions on conservation issues, the Board further responded to the goal of the FMP. An examination of the full record readily leads to the conclusion that conservation was the single most important consideration in the adoption of the Proposals.

FMP management objectives are:

1. Ensure the long-term reproductive viability of king and Tanner crab populations.
2. Maximize economic and social benefits to the nation over time.
3. Minimize gear conflict among fisheries.
4. Preserve the quality and extent of suitable habitat.
5. Provide public access to the regulatory process for vessel safety considerations.
6. Ensure that access to the regulatory process and opportunity for redress are available to all interested parties.
7. Provide fisheries research, data collection, and analysis to ensure a sound information base for management decisions.<sup>41</sup>

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<sup>41</sup> *Id.* See Summary of the Bering Sea and Aleutian Islands Groundfish Fishery Management Plan ("BSAI Groundfish FMP"), March 1997 at 1-2; Fishery Management Plan for Groundfish of the Gulf of Alaska, at 2-1, 2-2.

The Board diligently considered these objectives. It correctly observed that, a balance of those objectives would need to be achieved. The efforts to that end and the outcome rationally served the objectives and were amply supported by the record. The Board exercised that discretion committed to it by law.

By adopting Proposals 291 and 355 for the purpose of eliminating prospecting, and anticipating a reduction of excess capacity in the affected BSAI crab fisheries, an expectation associated with Proposal 287, as well, the Board responded to the first- enumerated objective set forth above. The Board also considered, and responded to, the risks to achievement of optimum yield, which it reasonably concluded would be reduced by the Proposals. The objective of maximizing economic and social benefits to the nation over time was clearly an important consideration, and the Board rationally determined that the Proposals met that objective. Safety was a major point of concern and served as a basis for adoption of the Proposals. The process was open to the public, and the Board carefully considered the information from the affected industry.<sup>42</sup>

### III. Conclusion

The Board properly followed the requisite procedures; analyzed the Proposals for consistency with the FMP and the Act, and in that process considered the information provided by the public in advance, as well as the scientific evidence provided by experts during the course of the deliberations; and in the exercise of its proper authority, rationally determined that the requirement for consistency had been satisfied.<sup>43</sup>

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<sup>42</sup> Objectives 3, 4, and 7 are not pertinent to the Proposals.

<sup>43</sup> Petitioners' claims that the Board's actions violate NEPA, the Regulatory Flexibility Act, and the Equal Protection Clauses of the United States and Alaska Constitutions are not worthy of serious consideration. The skeletal discussion of these claims indicate that Petitioners do not give the arguments

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weight. These federal statutes do not apply to the Board of Fisheries. The notion that the Board violated constitutionally protected rights is utterly ridiculous. The fact that Petitioners may have invested in different gears or vessel types does not give rise to an equal protection claim. *See State v. Hebert*, 803 P.2d 863 (Alaska 1990).

Brent C. Paine  
Executive Director

Steve E. Hughes  
Technical Director

Jeffrey R. Pike  
Washington D.C. Representative



**FAX TRANSMITTAL FORM**

DATE: July 23, 1999 FAX: 907-271-2817  
 TO: Rick Lauber, NPFMC  
 FROM: Steve Hughes, UCB *Steve*  
 SUBJECT: Crab Sideboards/ADF&G - Industry Meeting Report

**MESSAGE:**

Hi Rick. After our telephone call yesterday, I understand Wally and Dave were involved in discussions of crab sideboards, the upcoming NPFMC/BOF meeting and the ADF&G/Industry meeting on Bristol Bay red king crab management which we held in Seattle July 2, 1999. I understand they decided against the industry providing a report of the July 2, 1999 meeting and follow-up suggestions at this time, but rather to wait until after the July 27, 1999 NPFMC/BOF meeting. Accordingly, you do not have a report, but I have enclosed the two documents which we followed at the July 2, 1999 meeting with ADF&G -- Earl provided the ADF&G documents and I prepared the UCB document. Please use these in any manner you deem helpful.

Also enclosed are Judge Zilly's questions on sea lion issues which I mentioned to you in June.

cc: Without attachments  
 Wally Pereyra Donna Parker  
 Dave Fluharty Brent Paine

Original being sent via U.S. Mail

Number of pages, including this cover page: 2  Yes  No  
 If there are problems in transmission, call Lisa at  
 NRC, (206) 285-3480.

## MEMORANDUM

To: Counsel of Record  
From: Judge Zilly  
Case: Greenpeace v. NMFS, C98-492Z  
RE: Questions for Oral Argument on May 13, 1999  
Date: May 12, 1999

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## ESA ISSUES

## Methodology/Analysis

1. What is the justification for NMFS's changed conclusion regarding the effect of the pollock fisheries?
  - a. Is there new evidence? S1-55 at 99 says "No new studies have been conducted that provide conclusive evidence to help us resolve this issue in this biological opinion." Were there no new studies performed at all, or were there new studies with inconclusive or contrary results? What did NMFS do after the October 13, 1998 statement to Congress that "Given the current understanding of the sea lion/fishery prey interactions, additional research is warranted prior to establishing revised management actions." S1-861 at 87.
  - b. Did the fisheries change in ways more likely to affect the Stellers? If so, was this discussed/explained in the Biological Opinion?
  - c. Were the prior agency conclusions simply wrong?
  - d. To what extent can the Court consider the evidence and conclusions of the prior Biological Opinions in evaluating the current Opinion?
  - e. Does the Biological Opinion adequately explain the change in conclusions? See Oregon Natural Resources Council v. Daley, 6 F.Supp.2d 1139, 1152 (D.Or. 1998).
2. Can the Court consider documents other than the Biological Opinion itself when evaluating the Biological Opinion's findings? For example, can the Court consider the Environment Assessment/Regulatory Impact Review regarding reapportionment of the mackerel fishery (AR-28) when evaluating the finding of no jeopardy/adverse modification?
3. Is the methodology used to establish fishery effects on Steller sea lions scientifically



valid? In particular, is it scientifically valid to rely on assumptions to demonstrate the critical connection? Does the Biological Opinion rest on speculation? See *Benner v. Spear*, 117 S.Ct. 1154, 1168.

4. Does the Biological Opinion have to analyze jeopardy and adverse modification separately? Why or why not? See *Conservation Council for Hawaii v. Babbitt*, 2 F.Supp.2d 1280 (D. Hawaii 1998).
5. To what extent can/should NMFS consider the effects on the fishing industry when performing the various stages of its ESA consultation? For example, can it consider such issues in making jeopardy determinations? When evaluating RPAs? How should 50 C.F.R. § 402.02's "economically and technically feasible" requirement be interpreted?
6. Did NMFS justify its deviation from its policy as announced in the Consultation Handbook? Is NMFS required to do so? Why or why not? See *Southwest Center for Biological Diversity v. United States Bureau of Reclamation*, 143 F.3d 515, 523 n.4 (9<sup>th</sup> Cir. 1998).
7. To what extent does NMFS's justification for its actions depend on post hoc rationalization in the briefs?

#### RPAs

1. Is it appropriate to analyze the RPAs as a whole for effectiveness, or to look at each element/measure within the RPAs to see if it accomplishes the necessary goal of avoiding jeopardy or adverse modification?
2. What evidence is there that the RPAs will have a positive or negative effect on the Steller sea lion? What, if any, burden does the government bear in establishing the effectiveness of the RPAs for avoiding jeopardy or adverse modification? See 50 C.F.R. § 403.02.
3. How do the final RPAs, as approved December 16<sup>th</sup>, accomplish temporal and spatial dispersion?
  - a. For example, does the Biological Opinion or the RPAs explain how the RPAs' seasonal allocation in the BSAI will improve upon the 1998 allocation that was found to result in jeopardy?
  - b. Plaintiffs contend that the RPA regarding the GOA pollock fishery further concentrates the fishery into the fall and winter months. Is this true? Even if

not, how do the RPAs regarding the GOA accomplish temporal dispersion?  
Where is this explained in the AR?

4. The Biological Opinion states that "Complete exclusion of pollock trawl fishing is based on the available evidence that the regions around major rookeries and haulouts are so essential to the recovery and conservation of the western population that risk of competition from pollock trawl fisheries must be excluded completely." (S1-55 at 119). Similarly, the Opinion states that "[p]rotection of all rookeries and haulouts used by significant numbers of animals since the beginning of the decline" is necessary. *Id.* at 120. In light of these statements, how can the treatment of no trawl zones in the final RPAs be justified?
  - a. For example, how can the change of no trawl zones in the Gulf of Alaska, from 20 nm to 10 nm, be justified?
  - b. How can the exclusion of eight GOA haulouts from no trawl zones be justified?
  - c. How is the different treatment of no trawl zones regarding the mackerel fishery (vs. the pollock fishery) justified?
  - d. Is any such justification found in the AR?
5. Does the AR explain/support the closure of the Aleutian Islands sub-area to pollock fishing?
6. Do the RPAs really equate critical habitat with the Catcher Vessel Operation Area? Is it permissible to equate critical habitat with the CVOA, even in light of the size of the area involved?
7. Does the Biological Opinion adequately consider the effect of the American Fisheries Act on the BSAI pollock fisheries? What analysis supports the RPAs in light of the AFA effects?
8. Did NMFS articulate "a rational connection between the facts found in the BO and the choice made" (in the RPAs)? See Southwest Center, 143 F.3d at 523.

#### NEPA ISSUES

1. Are the NEPA claims in this case reviewed under the arbitrary and capricious standard of Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989), or by the reasonableness standard of Alaska Wilderness Recreation & Tourism Ass'n v.

Morrison, 67 F.3d 723 (9<sup>th</sup> Cir. 1995)? Why? How are the two cases reconciled?

2. What is the scope of the SEIS? What is the federal action at issue?
  - a. Specifically, is this a narrow SEIS which only concerns the setting of TAC levels? If so, what does NEPA require of the agency regarding the Fishery Management Plans as a whole?
  - b. Or is this SEIS a programmatic analysis of the FMPs as amended since the first EISs? If so, how does consideration of various TAC levels adequately analyze the required range of alternatives related to all facets of the FMPs?
  - c. How does deference to an agency's definition of the scope of an SEIS apply when the administrative record, and the SEIS itself, are ambiguous as to this scope?
3. Why does consideration of various TAC levels "result in a practical analysis of the environmental impacts of the fisheries"? (S2-550 at 3). Does a failure to explain this in the SEIS require remand?
4. When a number of changes have been made to a federal action, each of which is appropriately considered in an Environmental Assessment/Finding of No Significant Impact, does NEPA require the agency at some point to analyze the cumulative effects of changes to the federal action by preparing a supplemental EIS, or can the agency continue to issue EA/FONSI indefinitely?
  - a. If NEPA requires preparation of a supplemental EIS in such a situation, at what point is this triggered?
  - b. If NEPA does not require preparation of an SEIS, how is the purpose of NEPA fulfilled?
5. Can the Court consider the history of internal-NMFS criticism of the adequacy of NEPA documentation, when the challenges concern documents not directly under review in this case?
6. What kinds of alternatives must a programmatic analysis cover, as compared to a more narrow site or decision-specific analysis?
7. What is the legal effect, if any, of the broad scoping notice on the subsequent scope of the EIS? Compare AR-7 to S2-350.
8. What legal authority supports plaintiffs' position that failure to extend the comment period on the draft SEIS violates NEPA?

9. What is the legal authority supporting defendant's position that they were under no obligation to extend the comment period? For example, what regulation establishes the length of the comment period? Was the decision about extending this period solely in the discretion of the agency?
10. Is the Secretary, or the Council, the key decision-maker for NEPA timing purposes? What is the authority for this conclusion?

#### **OTHER ISSUES**

1. What is the relationship between the ESA and the Magnuson-Stevens Act, and what are the obligations of NMFS under each act?
2. If either plaintiffs or intervenors are successful, what relief is appropriate?

## **DRAFT SUMMARY OF THE ALASKA BOARD OF FISHERIES MARCH 1999 MEETING ON BRISTOL BAY RED KING CRAB**

### **I. Introduction**

At its meeting in Anchorage in March 1999, the Board of Fisheries considered various regulatory proposals involving the Bristol Bay red king crab commercial fishery, including proposals on registration requirements, guideline harvest levels and minimum exploitation rates, pot limits, pot storage requirements, hold and tank inspections, landing requirements, catch reporting, season changes, size limits, and preseason gear exclusion restrictions. These written findings are made to explain the board's reasoning in adopting or rejecting the various proposals and to satisfy the requirement for written findings found in the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab (FMP).

### **II. Season Change**

#### **A. Public Testimony and Committee Process**

The Board had before it Proposal 287, which sought to move up the opening date of the Bristol Bay red king crab commercial fishing season from November 1, to October 10<sup>th</sup>. This is an FMP Category 2 framework issue, requiring consideration of specific FMP criteria and the Magnuson-Stevens Act national standards, as well as consistency with state legal requirement. The Board took staff reports at the beginning of the meeting, took public testimony and then broke into committees to address similar proposals. Proposal 287 was assigned to Committee E – Bristol Bay King Crab, Record Copy (RC) 142 is the committee report. Other relevant reports or comments to the Board were: Staff Reports, RC4 (Tabs 1, 2, 13, 14, 17, 27, 28, 29); Staff Comments, RC4 (Tab 37, page 11); Advisory Committee Reports, RC110; and Public Comments, RC69, RC85, RC102, RC111.

During committee discussion of this issue, it was noted that this proposal would move the opening closer to the Pribilof and St. Matthew fisheries in the Bering Sea. The goal of this proposal was to reduce down time between the early red/blue king crab fishing seasons and the Bristol Bay red crab season. The proposer believed that moving the November crab fishery closer to the September crab fisheries would provide real benefits by eliminating the cost of mobilizing vessels and processing crews for the Bristol Bay season and allow a time window for vessel maintenance. This proposal would not impact the department's ability to manage this fishery.

The committee discussed the pros and cons of moving the start date from November 1 to October 10. Though many agreed there were benefits, many of the participants were uncomfortable with a starting date as early as October 10<sup>th</sup>. The proposer suggested moving the opening date to October 15. There was lengthy discussion on whether to move the start to the 10 or the 15 of October. There was consensus from all but one member of the public to move the date to October 15.

The Committee report and public testimony indicated the following industry points for and against this proposal:

**Points against:**

- (1) crabs may have less meat fill than if the season starts on November 1;
- (2) possible dead loss if surface and bottom temperatures are greatly different;
- (3) fishermen participating in the Bering Sea Korean hair crab fishery would be unable to participate in the Bristol Bay red king crab fishery;
- (4) trawl vessels which have fished in this area would be excluded regardless if the date were the 10<sup>th</sup> or 15<sup>th</sup> of October, because the trawl fleet normally fishes through the end of October.

**Points for:**

- (1) moving the red crab season just a few weeks earlier allows better market timing to distribute crab into the Japanese holiday season markets;
- (2) better weather in October for small boat safety concerns;
- (3) extra time for vessel maintenance after red crab fisheries and before the start of Bering Sea *C. opilio* fishery;
- (4) less down time between the Pribilof/St. Matthew and Bristol Bay king crab fisheries, which would save the fleet and processors money;
- (5) eliminating trawl vessels from 'crossing over' to the Bristol Bay red king crab fishery from the pollock fishery.

Discussions included all of the above. It was determined that the Department would work with the Bering Sea Korean hair crab fishers to eliminate the conflict of their fishery with the Bristol Bay red king crab fishery if this proposal were adopted.

One member of the committee representing trawl catcher vessels expressed concern that this proposal will exclude vessels that have historically fished in the Bristol Bay red king crab fishery after the trawl season. He stated that this would be the case regardless if date was set for the 10 or the 15 of October because the trawl fleet fishes through the end of October.

From the committee, the public panel recommendation was to move the opening date to October 15. This recommendation was a consensus from all but one member, representing trawl fishers. The recommendation from the Board committee members was

also to move the opening date to October 15 and provide the full Board with regulatory or Substitute Language for Proposal 287.

## **B. Board Deliberations of Proposal for Season Change**

The full Board received the committee minutes and a review by Committee Chair who described issues brought forward in the Committee. Substitute language from RC 142, p. 17, amending 5 AAC 34.810(b)(1) to provide a starting season date of October 15, was placed before the Board for its consideration and vote. The Board went through the FMP framework for fishing seasons and discussed the various National Standards pertinent to this decision.

### **1. Consideration of FMP Criteria for Fishing Seasons**

Just as policy makers cannot simultaneously apply the National Standards equally, they cannot meet these six FMP Season criteria equally either. Rather, they must consider all six and work to balance one against the other to achieve a rational distribution of impacts. As the transcribed record shows the Board attempted to meet the economic, safety and social concerns without reducing quality or increasing deadloss.

**Minimization of deadloss:** The Board recognized that the pre-1990 September seasons saw more dead loss than the current season. There was some speculation that this was caused by the temperature differential between the surface and the bottom. In the summer the temperature is more stratified, but by November the stratification has broken down. But in the Board discussion, they recognized that surface water temperatures change from year to year. They asked staff whether a two week period was significant. Staff believed that changes in dead loss was more associated with fresh water than ocean temperature, but that any difference in dead loss due to temperature over a two-week period would be quite insignificant.

Although not expressly discussed during the March Board meeting, the Board is aware that past Board records indicate that dead loss was a function of crab caught in pre-season bait-up periods and then held in holding tanks when fresh water was prevalent and adequate processing not available. When processing capacity would catch up with production, dead loss would decline. In early years, large GHs and long seasons exacerbated this problem and increased dead loss. Fishermen tended to overload their tanks with crab and hold them too long before off-load.

**Product quality:** The Board discussed the potential for crab having more or less meat fill depending on the starting date. Some of the information indicated that crab caught in September were smaller and weighed less than those caught in November. Dr. Otto indicated that the difference may have been partially due to differences in recruitment and thus the size of crabs available to the fishery. Crabs gained about a pound between the old and new seasons. The impact of a two-week period on weight gain, as opposed to five weeks, was less certain. The Board concluded that the closer the start date was to

September 25, the previous start date, the less meat fill expected, and the closer to November 1, the more the fill. So somewhere in between may produce some amount of quality consideration.

**Minimization of fishing during severe weather conditions:** In regards to minimizing fishing during server weather conditions, some small vessel owners testified that an earlier season would have better weather for small boat safety. But here again, the Board noted that though the old September season was best and November period is more of a concern, moving it only two weeks is not a huge safety gain.

**Minimization of the cost of industry operations:** The Board noted that hiring and keeping crews was clearly problematic throughout these fisheries because of the shortening of seasons and because declining fishing productivity influences prices and, therefore, crew shares. Extended periods between fishing seasons makes it both expensive and difficult to hold crewmembers. Additionally, it requires vessels to remain proximal to the Bering Sea grounds for long periods that raise costs and make vessel yard maintenance difficult to schedule. Moving the season up two weeks would help address these concerns and provide a longer maintenance window prior to the opilio fishery.

**Coordination of fisheries:** The FMP requires the Board to consider methods that coordinate the fisheries that have the same demands on harvesting, processing and transportation systems. Additionally, it states that seasons can be timed relative to one another to spread fishing effort, prevent gear saturation, and allow maximum participation in the fisheries by all elements of the crab fleets. Overlapping or reducing the space between various crab fisheries achieves this goal for the crab industry and the demands on harvesting, processing and transportation systems in the crab fishery do not seem to conflict with those other fisheries that are ongoing at the same time. There appear to be no specific concerns of gear saturation or spreading of fishing effort presented by a sixteen-day advance in the opening of the season. Concern over participation of the Korean Hair crab fleet was dealt with, and the Board is also taking separate steps to address participation by the Area O Brown king crab fleet.

**Reduction of costs of enforcement and management:** The department did not believe the reduction of enforcement and management costs before, during and after the season would be significantly impacted by the change in start date.

## **2. Consideration of Magnuson-Stevens Act National Standards**

The Board, in reviewing each of the National Standards as they relate to this proposal found that many of the standards were not applicable, and that those that were applicable were largely irrelevant due to the small shift in season timing. Mostly the Board noted that the primary focus would be on deadloss, quality and safety – but only in respect to small incremental changes. What seemed to be industry's real benefit, and the purpose behind the proposal, was to minimize the cost of industry operation. All of the other items were a balance, one against the other, but only to small amounts of gain or loss.



### **3. Other Considerations**

Another issue which had arisen during the committee, in public testimony and as RC 132, was the trawl vessels who participate in the red crab fishery. Testimony stated that crabber/traulners that fish in the Bering Sea B-season pollock fishery would be forced to decide between fishing the entire B-season pollock fishery or participating in the Bristol Bay king crab fishery. This would have the tendency to reduce the number of trawl participants in the crab fishery.

One industry committee member indicated that moving the season would benefit dedicated crab operators since it could reduce opportunity to trawl cross-over vessels who wanted to fish Bristol Bay red crab (similar argument that the trawl representative made). But the Board felt that this was an inappropriate basis for them to make a decision, stating that they should not go by indirection where they were not allowed to go directly, which was limited entry or access into the fishery. In further discussion, the Board recognized that if the effects of their action is justified by other benefits identified in the FMP, and if those actions had a possible consequence of forcing some fishers to choose between this fishery and another simultaneous fishery, they believed that was acceptable. In this case, the start date does not exclude any fishers from participating in the Bristol Bay red king crab fishery unless by choice. Every regulation that limits a fishing season has the potential to require some who might otherwise be able to participate, but want to participate in another ongoing fishery, to make tough decisions.

In this fishery, as in any other fishery such as salmon or groundfish, there are usually other fisheries that overlap or occur at the same time, preventing fishers from participating fully in both. Considering the actual level of annual participation by vessels that fish crab; it is obvious that each participant must annually evaluate whether to participate in a particular crab fishery or use their vessel to some higher economic benefit. The election to participate in a particular fishery is a universal quandary that fishermen face annually. The Board made changes for legitimate reasons within the FMP and within its authority, and unintended consequences occur frequently in fishery management. If the Board could not allow any overlap in such fisheries, consideration of all other criteria and public policy concerns would be lost to the Board.

Because the Board recognized that a decision might have allocative effects, even though not intentional, the Board reviewed and discussed the allocation criteria found in AS 16.05.251(e).

#### **C. Final Action by the Board**

After final discussion the motion to move the starting date to October 15 was passed by the Board with five members in favor, one against, one absent.

### **III. Preseason Gear Exclusion Period**

#### **A. Public Testimony and Committee Process**

The Board had before it several proposals dealing with the preseason gear exclusion period for the BSAI crab fisheries. Proposal 291 would have increased the preseason gear exclusion from 14 days to 30 days for only the Bristol Bay red king crab fishery. Proposal 354 would have included all types of gear, including trawl gear in the current 14-day exclusion period for all king and Tanner crab fisheries. Proposal 355 sought to include trawl gear in the exclusion, as well as to extend the existing 14-day preseason gear exclusion period to 30 days in all king and Tanner crab fisheries. The Board's affirmative vote on Proposal 355, as amended by substitute language, subsumed the other two proposals, although the Board did vote to affirmatively adopt Proposal 291.

Proposal 355 presented an FMP Category 3 issue. It proposed amending two existing regulations, 5 AAC 34.053 and 5 AAC 35.053, and read as follows:

**5 AAC 34.053. OPERATION OF OTHER POT GEAR, AND 5 AAC 35.053. OPERATION OF OTHER POT GEAR.** Amend these sections to provide the following:

A person or vessel that operates commercial, subsistence, personal use or sport fishing gears [POTS] in the 30 days immediately before the opening, or prior to registering for a commercial king or Tanner crab fishery in a crab registration area, may not participate in a commercial crab fishery in the crab registration area (where groundfish gear of any kind has been used).

This proposal was intended to provide a "fair start" to all crab fishermen by requiring a preseason gear exclusion period of 30 days between using sport, subsistence or commercial pot or trawl gear on the commercial crab grounds prior to the commercial crab fishery.

The Board took staff reports at the beginning of the meeting, took public testimony and then broke into committees to address similar proposals. Proposal 355 was assigned to COMMITTEE D – Bering Sea/Aleutian Islands King Crab issues. Record Copy (RC) 135 is the committee report. Board Committee Members were Ed Dersham (Chair) and Dan Coffey. Staff and industry committee members are listed in RC 135. Other relevant reports or comments to the Board were: Staff Reports, RC 4 (Tabs 1, 3, 4, 19 (Federal Requirements), 20 (FMP), 27, 30, & 34); Staff Comments, RC 4 (Tab 37,

page 33); Advisory Committee Reports, RC 110; and Public Comments, RC's 69, 85, 102, 111 and 132.

The committee noted that this proposal would include any and all fishing gear in the 30-day pot gear exclusion period prior to any king or Tanner crab fishery. The proposal to extend the preseason restriction period and include trawl gear arose from the concern that trawl equipped crab vessels have an unfair advantage over other crab fishers. Public testimony expressed concern that trawls vessels can use pelagic gear in the pollock fishery or bottom gear for cod or flatfish, right up to the registration deadline period for the king crab fishery.

Staff indicated that NMFS observer data of pollock trawl vessels showed a spike of increased king crab bycatch in early October. In fact, at least since 1993, in years when the red king crab fishery has been open in Area T, the observed bycatch of red king crab has peaked from 4,000 to 7,000 RKC during the October period; an occurrence that doesn't appear in years that the Bristol Bay red crab fishery is closed. Under the federal groundfish observer program, vessels less than 125 feet only have 30% groundfish observer coverage, and vessels without observers are known to sometimes behave differently than when observers are on board. Thus, there is a concern that 70% of the time, pollock or flatfish trawl vessels less than 125 feet in length are fishing without observers, which may provide an opportunity for undetected prospecting. Data indicate that October observer coverage is low.

Trawl gear is clearly an efficient crab survey method. However, fish ticket data does not show an increase in "average" catch of king crab by trawl vessels compared to similar length non-trawl crab vessels. One person testified that pollock trawlers had done about as well as the "crab fleet average". He found this surprising since the vessels are mostly operated by trawl fishermen, rather than crab fisherman, stating that this must prove that they were getting an advantage. This logic was persuasive to some, but not all Board members. In any event, the Board intent was to remove all opportunity for prospecting, and not to just react to accusations of past prospecting. In committee, the Public Panel Recommendation was a consensus in support of including pot and trawl gear. A consensus was not achieved on the length of the preseason restriction period. Some industry representatives wanted 30 days, some wanted 14 days. Others felt that 30 days was too restrictive and that the change of the red king crab season to October 15 would solve the problem. The Board Committee members supported a 30-day restriction period and inclusion of both pot and trawl gear. Substitute regulatory language was drafted.

#### **B. Board Deliberations of Proposal for Preseason Gear Exclusion**

From a historical statewide perspective, the Board has needed to address the reoccurring concern with vessels prospecting for high valued species prior to that species' season opening. The original regulation allowed a preseason bait-up period which is clearly within Category 3, Gear Placement and Removal. Because of dead loss concerns,

the BOF stopped allowing preseason bait-up periods. To assure that no vessels were on the grounds early with baited gear, they implemented tank checks and preseason gear exclusion periods in 1987 to preclude prospecting with commercial, subsistence or personal use crab pots. This was a case where one regulation (pre-season bait up) rolled into the other (gear exclusion /tank checks). It was modified two years later to include all pot gear after a large portion of the crab fleet started fishing P. cod with pots on the red king crab grounds just prior to a crab opener. The interest in pot cod fishing immediately diminished with the imposition of a 14-day preseason restriction period. A further illustration of statewide prospecting concerns was addressed this year by the Board when it adopted a 30-day preseason restriction period for the red and Tanner crab fisheries in Southeast Alaska. Since trawling is not allowed in Southeast, trawls were not included in the regulation.

### **1. Consideration of FMP Criteria and National Standards**

Under Category 3 of the FMP, the Board is not limited to only the management measures listed in the FMP, though the board must maintain consistency with the FMP goals and guidelines, National Standards and other applicable law.

The Board noted that "fair start" was an important equity issue, but that there were also important conservation concerns with prospecting. The utilization of pots, trawls or any other gear to determine the location of crab concentrations will only shorten the length of the season for a depressed stock fishery that the Board has been trying to lengthen to ensure conservation management. In fact, it would provide opportunities that are certainly contrary to the Board's attempt to rebuild this stock and inconsistent with National Standard 1. Further, there is bycatch mortality associated with prospecting and the National Standards require minimization of such occurrences.

The gear exclusion period is designed to prevent even the opportunity to prospect. Without prior knowledge by fishermen of crab location or abundance, the pace of the fishery can reasonably be expected to be slower than otherwise. The Boards' record is clear that a manageable fishery is important to ensure compliance with National Standard 1 to prevent overfishing and achieve optimum yield.

Further review of National Standards by the Board indicated how a fair start does not provide advantage (prospecting) to one area or community over another, and how this is then fair and equitable to all fishermen. The preseason gear exclusion period affects mainly two groups, groundfish pot fishermen and trawl fishermen. It closes the area for 30 days prior to the fishery start date to groundfish pot and trawl operation by those fishermen who wish to fish in the directed crab fishery. The goal was to level the playing field. This provision removes a potentially unfair and inequitable advantage that groundfish fishers have over other crab vessels that do not have groundfish pot or trawl gear on the grounds prior to an opening. It was felt that if the Board did not address this, they would be providing an opportunity for an individual, corporation or other entity to potentially acquire an excessive share of the fishery.

The Board recognized that it was not considering a Category 1 allocation, which is restricted to the NPFMC under the FMP. Nor were they trying a backdoor approach to this restriction. As with most regulations, there are necessarily some unintended allocative consequences.

## **2. Consideration of State allocation criteria under AS 16.05.251(e).**

Because this proposal has unintended allocation implications, the Board went through its state allocation criteria. Of these state criteria, the Board noted that the availability of alternative fishing opportunities inherently forces fishers to make a fishery participation choice. In fact, in the 1999 opilio fishery, a number of these same vessels chose to forego their A-season Pollock harvest to fish opilio --something they had not done in the past.

## **3. Other Considerations**

The Board questioned the department as to whether there was good justification to extend the preseason restriction from a 14-day to a 30-day period. Crab managers indicated that there was sufficient information to show that red king crab do not move all that much over a two week period. Industry representatives assured the Board that some of the vessels were in fact exploratory crab fishing under the auspices of cod fishing.

The Department of Law indicated that prospecting was a real enforcement problem. Law noted that prospecting is quite common, and that every year they seem to "find" several vessels, which are prospecting. Obviously, there is great advantage to being able to prospect, otherwise fishermen would not risk prosecution year after year.

The Board considered whether or not to include the CDQ vessels in the restriction, noting that the Council had many regulations that exempted CDQ vessels. The Board rejected any exemption to the CDQ fleet, stating that a fair start had to be fair to all.

Because of the concerns expressed in RC 132, the Board specifically discussed and evaluated each of the concerns laid out by the trawl representative. RC 132 stated that trawlers would lose a portion of their fall groundfish fishery if they chose to go crab fishing. The Board notes that it was only after the 1990 Board action to move the season start date to November 1 that these vessels were able to participate. The pollock fishery consists of an A1, A2, B and C season. These vessels are therefore not excluded from pollock fishing, but must choose whether to participate in the whole pollock B/C season or participate in the Bristol Bay crab fishery. Such choices are common. For example, 16 pollock vessels fished the January 1999 C. opilio season. Five of the vessels first fished pollock and then switched to opilio. But 11 of these vessels forewent their option to fish A-season pollock and chose to fish crab. Further, as the Board understands the discussions under the Council's AFA options, these vessels may form co-ops which could

accommodate some seasonal adjustment within co-op fleets (some fish early-some fish late). None of these actions were intended or considered to include or exclude these vessels from participation, only to exclude the opportunity to prospect.

The actions of the Board require that registrants in crab fisheries conform to conservation and management measures necessary to conserve and manage crab stocks. No vessel is excluded, only under certain conditions in a vessels groundfish endeavors must they elect one fishing opportunity over another. If vessel owners wish to register for BSAI crab fisheries they must prosecute groundfish fisheries in a manner so as to preclude their ability to prospect for crab during the specified fair-start interval. If groundfish fishing occurs outside the crab registration areas, a vessel may still participate in the crab fishery.

There was the statement in RC 132 that prospecting would not occur, mostly because it would use up the prohibit species cap (PSC) limit. However, as the Board understands PSC restrictions, 70% of the fishing time of vessels less than 125 ft. is unobserved for bycatch. Additionally, prospecting for red crab would occur only toward the end of the fall groundfish fishery, and would not shut down the pollock fishery. Data indicates that most of the Bristol Bay red king crab bycatch occurs in the Federal reporting area 509, on the of the commercial crab grounds.

Finally, RC 132 states that the Board does not have legal authority to create a federal fair start that affects the Bering Sea groundfish fisheries. The Board acknowledges that it does not have authority to manage groundfish in federal waters, nor, by imposing this restriction on the crab fishery, does it intend to. But the Board does have authority to regulate vessels, be they herring vessels, salmon vessels, Dungeness, king, or Tanner crab vessels from anywhere in the state, or groundfish vessels that wish to fish BSAI crab.

The Boards authority to manage crab fisheries in the EEZ arises under the FMP and the Magnuson-Stevens Act and must be consistent and comply with their associated statutory and regulatory requirements to conserve the resource. Compliance with these statutory and regulatory conservation standards does not become unnecessary simply because a conservation measure may have effects on other fisheries, including the groundfish fishery. The Board properly considers such effects on other fisheries, particularly in the context of the National Standards, but concerns about those effects do not trump conservation concerns or other standards the Board must consider. This regulation affects crab fishing vessels and is an extension of other regulations across the state which the Board has adopted or modified to curtail prospecting in state managed crab fisheries. The Board discussed the substantial impacts of their regulations to various users across the state in bringing statewide consistency to regulations.

The following information also supports the Board's decision on this issue. Regarding the imposition of trawl gear restrictions on crab vessels with trawl capacity, Board authority stems from one of the oldest anti-crab prospecting restrictions in our

regulations. Regulations 5 AAC 34.625 (c), 5 AAC 34.825(g) and 5AAC 34.925 (j)<sup>1</sup> all restrict vessels engaged in the taking or transporting of king crab from having on board an otter trawl with a head rope or foot rope longer than 60 feet. This regulation was put in place to stop prospecting with trawls during the boom years of king crab fishing. In the boom years, fishermen did not prospect preseason; instead, under the guise of bait fishing during the season, they used large trawls to prospect for high concentrations of crab to set their pots on. The Board restricted these vessels to a small otter trawl suitable for the harvest of bait, but of minimal value for prospecting. This regulation was in place prior to the imposition of the BSAI king and Tanner Crab FMP, was not challenged as provided for under the original FMP, and thus provided notice of the Board's authority to restrict groundfish gear from prospecting under the FMP.

### **C. Final Action by the Board**

The Board adopted the substitute language for Proposal 355 by a vote of six in favor, zero against, one absent.

### **D. Reconsideration by the Board**

Because of industry concerns, the Board reconsidered this proposal in the context of Tanner crab. They were asked to consider whether the 30-day preseason gear exclusion period should be the same for all fisheries. After much debate, the Board adopted the 30-day period for BSAI crab fisheries with small GHLS, and left the opilio fishery with its 14-day period. The opilio fishery has a large GHLS, the season lasts for two to three months and thus does not elicit a fair start concern as do fisheries that last a matter of days. But mostly, it was industry's operational concerns, and the CDQ groups who may want an early pre-season opilio harvest (but without exemptions from preseason gear restrictions and wanted uniform application) that felt the opilio preseason gear exclusion could be of shorter duration. Motion passes six, zero, one absent.

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<sup>1</sup> 5 AAC 34.925 has been in place since at least October 1974, Register 51. 5 AAC 34.625 has been in effect since July 1979, Register 70. 5 AAC 34.825 took effect in July 1980, Register 74.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### BOARD OF FISHERIES

TONY KNOWLES, GOVERNOR

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4110  
FAX: (907) 465-6094

April 20, 1999

Mr. Stephen Pennoyer  
Alaska Regional Administrator  
NOAA/NMFS  
Box 21668  
Juneau, AK 99802-1668

Dear Mr. Pennoyer:

Thank you for your April 9 letter requesting information about our recent statewide shellfish meeting. Your request will take some time to fill. We have recently completed back to back meetings that lasted over 16 days. Board members and staff have returned to their communities and are trying to pick up the pieces after our grueling winter schedule. Your request will be reviewed in consultation with pertinent board members, staff, and the Department of Law, along with a review of the record, as human resources and time allows in the most judicious manner. You have requested a lot of material, and I am aware that it has often taken your staff six to twelve months to pull together the record and process similar requests for the Council. Nonetheless, we will try to have it available for you sometime before the June Council meeting. In addition, I strongly recommend the content of your letter be referred to the Joint Protocol Committee of the Board of Fisheries and North Pacific Council for discussion.

Nevertheless, I am somewhat distressed over the need for providing this information. The "Procedures for FMP Implementation" outlined in the BSAI king and Tanner crab FMP presents appropriate protocol to answer your request.

"2. Representatives from the Council, NMFS and NOAA General Counsel will participate in the State's development of regulations for management of king and Tanner crabs in the BSAI area, including direct participation in the Board meeting for the purpose of assisting the State in determining the extent to which proposed management measures are consistent with the FMP, Magnuson-Stevens Act and other applicable Federal Law. ..."

While a single NMFS staff person was present at the beginning of the shellfish meeting, that individual was new at their job and likely could not have provided the appropriate policy direction raised in your letter. Had the appropriate staff been present and remained through the deliberations, they might have advised the Board regarding the concerns you now present. Additionally, they would have understood the factors the Board considered and debated in developing these regulations; which might have negated the need for your current request in the first place. Waiting for such input until after the meeting concluded increases the work load on



our already over-loaded staff, not to speak of frustrating the procedures in the FMP as well as the ability of the Board to perform its functions in an efficient and effective manner.

The apparent lack of interest by NMFS in staffing the Board meetings has been a concern of mine. Both Mr. Benton and I have raised this concern in the past. If the Board's agenda contains issues of concern to NMFS, it is incumbent upon your agency to meet the FMP protocol outlined above.

Again, thank you for your letter. We will do all we can to answer your request in a timely fashion. In the meantime, the record of the board's meeting, including tapes, tape logs, and pertinent documents are available for your inspection and review at the Boards Support Office in Juneau. You may contact Executive Director Diana Cote at 465-4110 to make arrangements.

Sincerely,



Dr. John White, Chairman  
Alaska Board of Fisheries

cc: Richard Lauber, North Pacific Fishery Management Council  
David Benton, Alaska Department of Fish and Game  
Diana Cote, Alaska Department of Fish and Game

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### BOARD OF FISHERIES

TONY KNOWLES, GOVERNOR

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4110  
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April 20, 1999

Mr. Clarence Pautzke  
Executive Director  
North Pacific Fishery Management Council  
605 W. Fourth Ave., Ste. 306  
Anchorage, AK 99501-2252

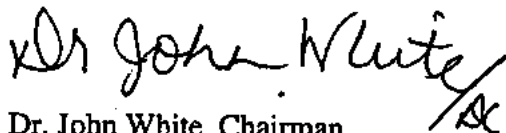
Dear Mr. Pautzke:

Thank you for your April 2 letter requesting information about our recent statewide shellfish meeting. Your request will take some time to fill. Applicable board findings on the proposals you listed are being prepared and currently unavailable. Although we will be unable to fill your request before the April Council meeting, we will try to have it available for you sometime before the June Council meeting. In addition, I strongly recommend the content of your letter be referred to the Joint Protocol Committee of the Board of Fisheries and North Pacific Council for discussion.

I have enclosed a copy of a similar information request we received from the National Marine Fisheries Service, along with my response to that letter.

Again, thank you for your letter. We will do all we can to answer your request in a timely fashion.

Sincerely,



Dr. John White, Chairman  
Alaska Board of Fisheries

Enclosure

cc: Richard Lauber, North Pacific Fishery Management Council  
Steven Pennoyer, National Marine Fisheries Service  
David Benton, Alaska Department of Fish and Game  
Diana Cote, Alaska Department of Fish and Game

**Substitute Language for Proposal 287 — FINAL VERSION**

**5 AAC 34.810. FISHING SEASONS FOR REGISTRATION AREA T (b)(1)**

(b) Male red and blue king crabs may be taken only as follows:

(1) from 4:00 p.m. October 15 [NOVEMBER 1] until the season is closed by emergency order, [EXCEPT DURING THE 1997 AND 1998 FISHING SEASONS FROM 4:00 P.M. NOVEMBER 1 UNTIL THE SEASON IS CLOSED BY EMERGENCY ORDER.]

**PROPOSAL 287** - 5 AAC 34.810. FISHING SEASONS FOR REGISTRATION AREA T.  
Amend this regulation to provide the following:

October 10<sup>th</sup> opening for Bristol Bay red king crab.

**PROBLEM:** Bristol Bay red king crab season. Move opening date from November 1<sup>st</sup> to October 10<sup>th</sup>. This would help the entire industry by having the Bristol Bay season closer to the St. Matthew and Pribilof seasons.

**WHAT WILL HAPPEN IF NOTHING IS DONE?** Higher start-up costs for the entire industry. Weather concerns are also a factor.

**WHO IS LIKELY TO BENEFIT?** Entire fleet, processors and businesses.

**WHO IS LIKELY TO SUFFER?** No one.

**OTHER SOLUTIONS CONSIDERED?**

**PROPOSED BY:** Ron Briggs, F/V Trailblazer

(HQ-98-F-059)

\*\*\*\*\*

**FAVOR**

**OPPOSE**

PC37 - PNCLAC

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**FINAL ACTION:** Carries    Fails    Tabled    No Action    See Prop. # \_\_\_\_\_

ABSENT \_\_\_\_\_ ABSTAIN \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_ TAPE # \_\_\_\_\_

PROPOSAL 287

1  
2  
3 **March 24th, Wednesday** Tape 19B at 257  
4

5 CHAIRMAN WHITE: Proposal 287 to the record,  
6 Mr. Donaldson.

7 MR. DONALDSON: 5 AAC 34.810, Fishing Seasons  
8 for registration Area T.

9 UNIDENTIFIED SPEAKER: Move to adopt.

10 MR. UMPHENOUR: Second.

11 CHAIRMAN WHITE: From committee, Mr. Coffey.

12 MR. COFFEY: Yeah. Mr. Chairman, the purpose  
13 of this -- hang on a second, well, Mr. Chairman, page 17 is  
14 substitute language for Proposal 287, that's page 17 of RC 142  
15 for purpose of the discussion, move to adopt the substitute  
16 language on page 17 of -- of RC 142 for Proposal 287.

17 UNIDENTIFIED SPEAKER: Second.

18 CHAIRMAN WHITE: Board Members, is there any  
19 objection to substituting the language contained on page 17 of  
20 RC 147, -- 142, my apologies to the record, for the language  
21 contained in Proposal 287? Hearing none, Mr. Coffey from  
22 committee.

23 MR. COFFEY: Thank you, Mr. Chairman. Again,  
24 the committee report contains the salient factors of this  
25 proposal, the pros and the cons. Mr. Chairman, I would note  
26 that this is a fishing season, thus it is a Category 2 in the  
27 FMP framework. That means if we want to change this, we can  
28 change them if we follow the criteria set out in the FMP. Mr.  
29 Chairman, the Category 2 -- yeah, I'm going to get there in a  
30 second. Category 2 considerations, Mr. Chairman, are set out  
31 on page 30 of RC 4, Tab 20, the Fisheries Management Plan.  
32 Mr. Chairman, with that in mind, I would ask for staff

PAGE 1

1 comments.

2 CHAIRMAN WHITE: Mr. Morrison, staff comments,  
3 please, sir.

4 MR. MORRISON: Mr. Chairman, changing the  
5 opening date would be allocative. We would still be able to  
6 manage the fishery at this new opening date and -- but there  
7 could be some allocative implications associated with changing  
8 the date.

9 CHAIRMAN WHITE: Thank you much, sir. Mr.  
10 Coffey, in addition from committee.

11 MR. COFFEY: Yes, Mr. Chairman, that I've  
12 directed your attention to -- the Board's attention to the  
13 provisions of the FMP, I'm just searching out the page here  
14 for fishing seasons, which is on page 35 of RC 4, Tab 20, page  
15 35 and so we can all get on the same sheet of music here.  
16 Okay, Mr. Chairman, if -- if my fellow Board members have that  
17 in front of them, they can see the criteria that's associated  
18 with that and -- and I just -- I want you -- I mean I just  
19 want to have the Board members have the opportunity to review  
20 that as we have this discussion. So let's -- if it's there in  
21 front of you, you can look at it now. Mr. Chairman, this  
22 proposal was initially to move it to October 10th. There were  
23 discussions among industry representatives, both during and  
24 before this meeting and a substantial number of them agreed  
25 that they would move the date, but they would move it to --  
26 they could move it to October 15th. So the debate then, came  
27 down to October 10, October 15th, or status quo. Since the  
28 committee meeting, ex parte communications which I have had  
29 with various members of the industry indicate that -- I think  
30 the best way to characterize it is, I wouldn't have any  
31 heartburn if you left it on the first of November. So,  
32 there's no consensus among the various participants in the

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1 fishery as to the date. The pros and cons of doing it are set  
2 forth in the -- in the committee report on page 6 of RC 142.  
3 Basically, it -- there's market issues, having less meat fill  
4 -- in fill than they would have if it was later. There's  
5 warmer temperatures in this period of time, which means when  
6 you fill your live tanks, you're going to have warmer water,  
7 you're bringing crab from depth where the water's colder,  
8 you're going in increase the dead loss. Dr. Otto [ph], for  
9 example, told us in committee as our technical advisor that  
10 later in the year, your -- your surface water temperature is  
11 about the same as the bottom water temperature, you won't have  
12 that change. Here, earlier in the season is the amount of  
13 significant difference between the two periods. There was  
14 information provided to the committee about the amount of in -  
15 - meat in fill when this thing -- when this fishery used to be  
16 prosecuted, I think it was 15 September and they -- you can  
17 see in charts that were provided to us by staff, that there  
18 was an increase of -- significant increase and when you look  
19 at 1989 and before when the fishery was prosecuted earlier,  
20 the crab are smaller and weigh less. When you look at 1990  
21 and later, they're bigger and weigh more, so the in fill is a  
22 significant problem. On the other hand, there's reasons in  
23 favor of it. There's better better weather earlier, to some  
24 degree, it's not as cold, better for the small boats. Also,  
25 extra time for vessel maintenance and that sort of stuff.  
26 Also concerns about being able to hold onto your crews,  
27 because there's less time between fishing seasons. So this  
28 was back and forth, bandied around. There's also a tangential  
29 issue that comes in here and it's related to the license  
30 limitation program in the federal -- in the -- it's right  
31 before the counsel as to the number of vessels. Apparently,  
32 if it's earlier in the year, the -- it depends on your point

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1 of view, whether they're cross-over vessels or -- or pirates  
2 or those dirty dogs, but certain other vessels would be able  
3 to get into this fishery which would otherwise not be able to  
4 get into this fishery. Mr. Chairman, I don't believe that  
5 that's an appropriate basis for us making our decisions. I  
6 think we should go on the -- on the other considerations, if  
7 we're going to address that issue, we should address it head  
8 on and not as -- as part and parcel, but I think it's  
9 important for the Board to understand that that may --  
10 changing the date may have some effect on this and we did, in  
11 committee, spend a bit of time on this. Mr. Dersham and I --  
12 excuse me, not Mr. Dersham and I, Mr. Nelson and I, after  
13 discussing this, at the time, felt that -- that given all of  
14 the discussions in committee that moving the date to October  
15 15 would be an appropriate thing to do and that's what the  
16 substitute language says. However, Mr. Chairman, as noted,  
17 there have been discussions by industry and others since that  
18 time and there -- there's no consensus here. So I think  
19 what's most important, even though the Board Committee has  
20 suggested this might be appropriate, there's -- there's need  
21 for a full discussion among the Board members and relative to  
22 the considerations in the FMP. Mr. Chairman, that's from the  
23 committee.

24 CHAIRMAN WHITE: In addition from Committee,  
25 please, Mr. Nelson.

26 MR. NELSON: Thank you, Mr. Chair. Mr. Coffey  
27 did a great job of explaining this and I -- I concur with him  
28 and also on RC 110, it says that 287, the PNCIAC was opposed  
29 to this proposal, Mr. Chair.

30 CHAIRMAN WHITE: Mr. Umphenour, please.

31 MR. UMPHENOUR: Thank you, Mr. Chair, I was  
32 also on the committee for this proposal and one thing, Mr.

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1 Coffey, I want to expound -- explain a little bit further was  
2 that the crab's average weight when they were -- when the  
3 fishery took place earlier, which was, I believe it started on  
4 the 25th of September, the average weight was approximately a  
5 half-a-pound a crab less. However, these were shorter crabs  
6 measured from nose to tail and so being's they were shorter  
7 crabs, that could also account for part of the -- the smaller  
8 weight or lesser weight, whatever you want to call it. I just  
9 wanted to point that out, Mr. Chair.

10 CHAIRMAN WHITE: Other discussion, Mr. Engel,  
11 please.

12 MR. ENGEL: Thank you, Mr. Chairman. I guess  
13 this would be a question to Mr. Morrison. He indicated this  
14 is -- there's allocative aspects to it and I'm -- I'm guessing  
15 from the committee report that this would pertain to the hair  
16 crab fishermen, which may be unable to participate and the  
17 trawl vessels might be -- not be able to participate if the  
18 season was moved forward. Could -- I wonder if Mr. Morrison  
19 could expand on that and give me some numbers and -- or -- or  
20 any other aspect of the allocation, what are the allocated  
21 fisheries here, Mr. Chairman.

22 CHAIRMAN WHITE: Mr. Morrison for Mr. Engel.

23 MR. MORRISON: Mr. Chairman, Mr. Engel, I -- I  
24 can certainly comment on the hair crab portion of it; we do  
25 manage that fishery. There's currently 23 licenses that are  
26 issued for that fishery. It is a limited entry fishery,  
27 legislature did pass legislation to limit numbers of vessels  
28 in that fishery -- or number of permit cards. That fishery is  
29 open from January 1 through December 31 by permit and we -- we  
30 elect to issue permits during a certain period of time to --  
31 to keep that fishery orderly. In the past, we've established  
32 the -- the time when we were going to issue permits based on

1 what the industry's desire was. It's been a fairly cohesive  
2 group that we worked with. Just this last year, we sent out a  
3 questionnaire. There was a desire to change the opening date  
4 from November 1 to some different date and we arrived upon a  
5 new opening date and, so at this point in time, the opening  
6 date is 10 days following the closure of the Saint Matthew or  
7 Pribilof fishery, whichever occurs last. So, in that  
8 situation, an October 15th opening date for Bristol Bay would  
9 likely conflict with that fishery. However, we could, and --  
10 and would be willing to go back to industry with another  
11 questionnaire in light of -- of -- if this proposal were to  
12 pass and give the -- the hair crab industry or the -- the  
13 participants in that fishery, a chance to -- to select a  
14 different date.

15 CHAIRMAN WHITE: Mr. Engel to follow.

16 MR. ENGEL: Very well, thank you for that  
17 clarification. What about the issue of trawl fish, those  
18 trawl vessels may be excluded from the fishery if it starts on  
19 October 15th, what's the issue there, numbers of vessels, or  
20 whatever is going on.

21 CHAIRMAN WHITE: Mr. Morrison, please.

22 MR. MORRISON: Mr. Chairman, Mr. Engel, I'm  
23 sorry that I -- I can't really answer that question, I'm not  
24 that familiar with the trawl fisheries; we don't manage them.  
25 And I'm -- I just really don't have a good feel for the  
26 number of vessels or -- or how this would implicate those --  
27 those vessels.

28 CHAIRMAN WHITE: Mr. Engel.

29 UNIDENTIFIED SPEAKER: Yeah. On the -- on the  
30 trawl issue, there was a -- in committee Mr. Engel, there were  
31 representatives from one of the trawl associations as well as  
32 -- as people who are in the crab fishery who are familiar with

1 | what would happen and -- and my understanding is that with the  
2 | -- with an earlier date such as this, moving this date up  
3 | would have the tendency to reduce the number of trawls that  
4 | would be able to participate based on the fact that the -- the  
5 | fishery for either the -- the C season or the combined B and C  
6 | season for the pollack trawl fleet would extend into and  
7 | through this period of time. So, therefore, if they're  
8 | fishing, which I understand that season closes October 31st,  
9 | so if they are fishing through that period of time, then -- I  
10 | mean if the season opens and they -- they would be forced to  
11 | an election, they would either have to quit trawling for  
12 | pollack and go crabbing or continue to fish for pollack and  
13 | not go crabbing and, obviously, if you move it up 15 days,  
14 | they're -- they're limited more than if you left it at  
15 | November 1, because then they might knock off five days early,  
16 | right in -- in the pollack fishery and still be able to go  
17 | crabbing. That's -- that's the rub of it, you would cut into  
18 | one of their fisheries, either 15 days or 20 days, depending  
19 | on whether you picked the 10th or the 15th, Mr. Chairman.

20 |                   CHAIRMAN WHITE: Mr. Engel.

21 |                   MR. ENGEL: All right, thank you for that  
22 | clarification. I have a question, I guess it would be for Mr.  
23 | Morrison. Apparently, one of the issues is that by moving the  
24 | date forward to -- by two weeks that there would be less meat  
25 | and the cover would be less. What -- what are we talking  
26 | about here, how much difference is there in a normal two-week  
27 | period, Mr. Chairman?

28 |                   MR. MORRISON: Mr. Chairman, Mr. Engel, I  
29 | think it would depend on -- on the year. Historically, this  
30 | fishery actually was open on the 25th of September, and so  
31 | they certainly did fish quite a bit earlier than that. In the  
32 | committee discussion, Dr. Otto commented on the -- the

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1 difference in the weight and also indicated that -- that some  
2 of that difference may have been to some differences in  
3 recruitment and the size of the crab that were available, from  
4 when it was open in September and when it was open in -- in  
5 November, but it -- it sounded like crab gained about a pound  
6 between those two periods of time and so two weeks would  
7 probably not be a lot, but I really couldn't say, you know,  
8 how much weight gain you'd get in those two-week period of  
9 time, but as -- as you go farther into winter, the -- the meat  
10 fill does increase, as does, in some instances, possibly the -  
11 - the product quality and, in some cases, the degree of dead  
12 loss as well.

13 CHAIRMAN WHITE: Mr. Engel, please.

14 MR. ENGEL: Well, that was going to be next  
15 question, the -- the dead loss. I recognize that water  
16 temperatures differ from year to year, but are we talking  
17 about something that's significant, is what I'm trying to, in  
18 your judgment, that could greatly increase the dead loss.  
19 Obviously, you've had experience when the fishery started much  
20 earlier, so what -- what change have you seen since when it  
21 was back in September, versus when it starts in November? Has  
22 this been a significant change, little change or no -- or  
23 virtually no change? I'm just trying to get sense for some of  
24 these issues -- quantify them, if you can, Mr. Chairman.

25 CHAIRMAN WHITE: Mr. Morrison, please.

26 MR. MORRISON: Mr. Chairman, Mr. Engel, Dr.  
27 Kruse [ph] presented some -- some temperature data for the  
28 Pribilof Islands anyway, and maybe it would be helpful for him  
29 to walk through this. I -- my remembrance of it is that it  
30 might be as much as a degree or two, but ...

31 CHAIRMAN WHITE: Dr. Kruse, please proceed,  
32 sir.

1 DOCTOR KRUSE: Mr. Chair, I have in front of  
2 me a graph that was -- that I produced, basically showing the  
3 minimum, maximum and mean monthly air temperatures for  
4 Pribilof Islands over a nearly 20-year period, 1975 through  
5 1993, and what I can do is interpolate for you the average  
6 temperatures during October and November. Essentially, in the  
7 month of November, the long-term mean temperature in terms of  
8 degrees Centigrade would probably be about .5 degrees, that is  
9 just above freezing level, maybe about 33, 34 degrees  
10 Fahrenheit. The range in monthly temperatures over this 20-  
11 year period go from a minus, about 2.5 degrees Centigrade, so  
12 we're below freezing, up to a high of approximately plus 3  
13 degrees Centigrade. In the month of October, on the other  
14 hand, the monthly mean for all the Octobers in the record was  
15 about 4 degrees Centigrade, and, again, the minimum monthly  
16 temperature in October over all the years was about plus 1  
17 degrees and the highest was about .7 -- about 7.5 degrees  
18 Centigrade. So, in -- in summary then, we have basically a  
19 peak in mean monthly air temperature in August and since then,  
20 it's -- it's cooling in the fall, it's cooling through October  
21 and continuing to cool through November, and, in fact, the  
22 coldest months of the year are February and March.

23 CHAIRMAN WHITE: Mr. Engel, please.

24 MR. ENGEL: I guess I would have guessed that,  
25 it's warmer in August and gets cooler as the season goes on.  
26 What I'm wondering is that -- how do these temperatures relate  
27 to dead loss? We had a fishery in September where we must  
28 have measured that, and we have a fishery in November, which  
29 we have -- I've seen figures for some of the dead loss in  
30 that. Is there a significant difference in a couple degrees,  
31 or what can you tell me -- I'm talking about dead loss. Is  
32 this a significant factor, this Board should -- should use in

1 judging this proposal is what I'm trying to get a -- a feeling  
2 for, Mr. Chairman.

3 MR. MORRISON: Mr. Chair and Mr. Engel, I --  
4 I'm not sure I -- we -- we could look at the dead loss and  
5 compare it, but just looking at the -- the table 1 in the  
6 written report, nothing jumps out at -- at me, but we could  
7 certainly calculate the percentage of dead loss from when the  
8 -- the season was in September -- September the 25th and then  
9 compare that to November. We haven't done that.

10 CHAIRMAN WHITE: Mr. Engel.

11 MR. ENGEL: All right, that's all I have for  
12 right now. I -- if you -- if, during the course of this  
13 discussion, you get something that -- I'm not asking for a  
14 quantification, I'm asking for something that -- a significant  
15 -- you know, difference or -- or something that's so subtle  
16 you can't even detect it by a quick look at it, that's what  
17 I'm -- I'm asking for, not some sophisticated statistical  
18 analysis of the -- the situation. But if you don't have it, I  
19 don't want to dwell on it right now, but I'm still mulling it  
20 in my mind and which -- is this -- what page of this report  
21 are you looking at, maybe I could look that up myself and come  
22 up with that judgment.

23 CHAIRMAN WHITE: Mr. Morrison.

24 MR. MORRISON: Mr. Chairman, that's on page 7,  
25 but -- but possibly, this might go partway to answering that  
26 question. I think ...

27 CHAIRMAN WHITE: Question on the papers, Mr.  
28 Morrison, page 7 of?

29 MR. MORRISON: Page -- excuse me, page 7 of --  
30 of my written report, I don't have a tab.

31 CHAIRMAN WHITE: Mr. Donaldson, to the papers.

32 UNIDENTIFIED SPEAKER: Mr. Chairman, I'm sure

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1 -- Rance, which -- which year is that report, '97-98?

2 MR. MORRISON: Yeah, this -- I -- I think it's  
3 Tab 2 on -- in RC 4.

4 UNIDENTIFIED SPEAKER: Tab -- Tab 2 is '98  
5 Fishery Summary Red King Crab.

6 CHAIRMAN WHITE: Mr. Coffey, on the papers.

7 MR. COFFEY: Yeah, Mr. Chairman, that would  
8 make it RC 4, Tab 2, page 7.

9 CHAIRMAN WHITE: In addition, Mr. Morrison, my  
10 apologies for the interruption.

11 MR. MORRISON: Yeah, thank you, Mr. Chairman.  
12 Mr. Engel, I think some of the dead loss -- the changes in  
13 dead loss that we see may be more associated with fresh water  
14 than -- than it would be with temperature. I -- I would think  
15 that the difference in dead loss due to temperature over a  
16 two-week period would be pretty insignificant.

17 MR. ENGEL: Thank you, that's what I was  
18 trying to get at. Thank you, Mr. Chairman, that's all I have  
19 right now.

20 CHAIRMAN WHITE: Mr. Coffey, the chair would  
21 appreciate, for the benefit of the whole board, a -- a  
22 detailing of the record, considerations of our consistency  
23 with the FMP and the national standards and a cross-check with  
24 Dr. Krygier to make sure that the record's straight about  
25 this.

26 MR. COFFEY: That's wisdom, Mr. Chairman.  
27 Open fishing seasons are generally set, and here is one of the  
28 topics we've been talking about, to minimize the amount of  
29 dead loss, which we all know increases if the -- there's  
30 warmer water as opposed to colder water. Also, one of the  
31 considerations is to produce the best possible product  
32 quality, and we have a situation here where we're moving back

1 into a period where the data shows that the quality starts to  
2 decline. I mean, you know, the closer we get to the September  
3 25th period where we used to fish, the more we can conclude  
4 that we'll have less meat in fill than the closer we are to  
5 November and we have data over fairly long periods of time for  
6 both of those extreme dates, November time period, September  
7 time period. And now we're talking about basically cutting in  
8 the middle. So there's -- there's some product quality  
9 questions that need to be considered. A third one is to  
10 minimize fishing during severe weather conditions. The  
11 information developed in committee was that the further you  
12 get in to winter, the more likely you are to face severe  
13 weather conditions, but that a November fishery is not one  
14 that is characterized by substantial freezing and icing  
15 conditions, which we understand to be the worst period of time  
16 for the fisheries. Certainly, it's colder in November than it  
17 is in October, but it's a two-week thing and it's not hugely  
18 significant. There was very little discussion about  
19 minimization of the -- well, no, that's not true, I'm sorry.  
20 There is discussion about the minimization of the cost of  
21 industry operations. That's -- that was conducted in the  
22 course of discussions about vessel repairs, things that we had  
23 there are reflected in the committee report, and also this  
24 crew situation. Crews are becoming problematic for all of  
25 these industries because of the -- the general decline in --  
26 in fishing and fishing productivity that we've seen and the  
27 fall in prices and so on. If you have a long time between  
28 fisheries, it's hard to hold your crew; it's expensive to hold  
29 your crew. You can't sit on the beach for 35 days and have it  
30 not cost you a lot of money and if you've got to compare it to  
31 sitting on the beach for five days, you'd rather do that than  
32 35 days. So, we're talking about a change here of somewhere

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1 | in the range of 15 to 20 days, that does make some difference  
2 | in the cost of industry operations. We're also asked to  
3 | coordinate these crab fisheries, other fisheries that are  
4 | making demands on the same harvesting, processing and  
5 | transportation systems. As near as I can determine from the  
6 | information provided to us, that is not significant here. The  
7 | demands on harvesting, processing and transportation systems  
8 | in this crab fishery, do not conflict with those other  
9 | fisheries that are ongoing at the same time. Finally, we have  
10 | reductions of cost of enforcement and management before,  
11 | during and after the season. We were told by the department,  
12 | which manages this fishery, that that is not a significant  
13 | matter, be it the 15th or the 10th or the 1st. So, Mr.  
14 | Chairman, the -- the standard -- or excuse me, the fishing  
15 | seasons consideration set forth in the Fisheries Management  
16 | Plan for open fishing are those. For closing the fishery,  
17 | there are these: Protection of breeding populations, that's  
18 | not significant. The -- the plan says that the biological  
19 | sensitive period is from late winter to early summer, so  
20 | obviously, early winter, late fall is not an issue.  
21 | Consideration of molting periods, that's not an issue here.  
22 | Protection of the population during sensitive soft shell  
23 | periods, not a problem here. And increasing product quality,  
24 | which is also the same reason why we have open seasons and we  
25 | had our discussion on that. Finally, there's discussions  
26 | which are not really pertinent here of varying from these  
27 | closed seasons and we don't have an exploratory fishery and we  
28 | don't have adverse environmental conditions, so they --  
29 | they're not really relevant. Mr. Chairman, that's the FMP  
30 | considerations, as I understand them. Finally, there's the  
31 | national standards, which are, of course, applicable to all of  
32 | these, these are found in R -- RC 4, Tab 20 at page 51 and

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1 | they are things along the lines of conservation and management  
2 | measures to prevent over-fishing. Again, I don't that's  
3 | applicable to this and the conservation and management  
4 | measures best -- based upon the best scientific information  
5 | available. Well, we've got some pretty good data on the  
6 | criteria we've had to deal here and so, I -- I don't think  
7 | we're -- we would be relying on anything other than the best  
8 | scientific information. Management of the fish throughout its  
9 | range, Mr. Chairman, this is not a consideration here, where  
10 | there's no -- and there's an issue about discrimination  
11 | between residents and non-residents. I don't think that's the  
12 | case here. We have no -- we haven't been provided recent  
13 | information, but my understanding over the previous times we  
14 | dealt with this is we've got local residents, we got out of  
15 | state residents and these things are not -- dates of season  
16 | are not determining factors relative to the residency of those  
17 | engaged in these fisheries. Mr. Chairman, the next standard  
18 | which is in the National Standards is the conservation and  
19 | management measures promote efficiency in the utilization of  
20 | fisheries resources. Again, I -- I don't see much difference  
21 | here, with a short shift in the season in terms of using --  
22 | utilization of fisheries resources becoming inefficient,  
23 | although we do have some questions about size and quality  
24 | which may have some consideration here. The next standard is  
25 | conservation of management measures shall take into account  
26 | and allow for variations among and contingencies in fisheries,  
27 | fisheries resources and catches. My analysis of that is that  
28 | a two-week or 20-day change is not going to make a -- the  
29 | variations in these fisheries and fisheries resources and  
30 | catches are going to vary more widely than a 10- or 20-day  
31 | change in this fishery. Things -- Mother Nature is much more  
32 | -- swings much more widely than that, in my judgment. How --

1 | how these affect the communities of -- involved in -- in these  
2 | fisheries is very, very difficult to determine. What we tried  
3 | to do is sustain the participation of those who are reliant on  
4 | this, and I think -- again, I don't see how these changes make  
5 | a significant difference. The minimization of bycatch and  
6 | bycatch mortality, Mr. Chairman, there was some discussion of  
7 | the bycatch, and in particular, the temperatures of which the  
8 | sub-legal males and the females would be subjected to, we do  
9 | not have air temperatures that are significantly below  
10 | freezing, and the time on deck from the observed situation is  
11 | between one and two-and-a-half minutes, if I recall correctly,  
12 | which is low and quickly handled and over -- back over the  
13 | side so we don't -- we aren't freezing them and -- and causing  
14 | huge bycatches. Again, you can have very cold temperatures in  
15 | middle October, you can have warmer temperatures in early  
16 | November, so I don't know that we're having a substantial  
17 | concern. And finally, is the promotion of safety of human  
18 | life at sea, and obviously, we had this discussion about how  
19 | it's a little safer earlier in the year because the weather  
20 | conditions are a little bit better, but again, it's not -- the  
21 | magnitude of the change being contemplated by this is not such  
22 | that any one of these individual considerations, including  
23 | this last one, overweighs or predominates in these  
24 | circumstances, Mr. Chairman. So I think if we consider those  
25 | standards, we're talking about a relatively small change, but  
26 | we need to focus primarily on the dead loss, primarily on  
27 | quality and primarily on safety, but again, we're talking  
28 | about small incremental amounts of change in these areas. Mr.  
29 | Chairman, I hope that helps.

30 |                   CHAIRMAN WHITE: Dr. Krygier as to the  
31 | completeness of Mr. Coffey's considerations, sir.

32 |                   DOCTOR KRYGIER: Yeah, Mr. Chairman, I think

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1 Mr. Coffey did an adequate job of covering the issues and  
2 certainly, he laid out the constraints of what -- what this  
3 proposal did and didn't do by its -- the amount of changes it  
4 proposes.

5 CHAIRMAN WHITE: Thank you very ... [Tape ends  
6 mid-speech]

7 Tape 20A  
8 000

9 MR. ENGEL: [Tape begins mid-speech] ...  
10 there's negative on the other side and he addressed those. To  
11 minimize dead loss is negative, perhaps, very subtly, but two  
12 weeks, as Mr. Morrison said, to produce a better product, I'm  
13 reading off the FMP, but it's [indisc.]. So those are two  
14 negative things by moving it forward. Perhaps, almost  
15 unquantifiable, but nonetheless negative in our best available  
16 scientific information. On the other hand, the two other  
17 things that are on the plus side of the ledger is to minimize  
18 fishing during severe weather conditions. Well, who knows the  
19 difference between two weeks, that's about what [indisc.] in  
20 two weeks. It should be better the earlier in the summer or  
21 fall and -- and the other one is to minimize the cost of the  
22 industry operation, which is one of the driving forces behind  
23 this. So, it's a balancing act and no matter how much weight  
24 you put on either of those two -- the plus side or the  
25 negative side, it's not very great, in my judgment, at least I  
26 haven't so far been able to determine that. As far as the  
27 allocative aspect of it, that, Mr. Morrison indicated, with  
28 some adjustments in hair crab fishery, that that shouldn't be  
29 a serious allocation thing, and I -- I don't know, at this  
30 point, I haven't got it clear in my mind the effects on the  
31 trawl fishery, because I didn't get a lot of specific  
32 information. Whether that's a problem or not, I -- I don't

1 know. So, I'm having a difficult time placing the weight,  
2 given what I just said on which way I want to go on this, so  
3 I'd like to hear from some of the other Board members, but  
4 that's what I see, where we're at in my mind, anyhow, subtle  
5 changes one way or the other, not major and I've haven't been  
6 able to detect a major allocative shift, so perhaps as we get  
7 into the discussion, somebody could indicate a little bit more  
8 leverage one way or the other way so I could -- could move on  
9 this, but I can't move at this point, Mr. Chairman, because  
10 I'm still undecided.

11 CHAIRMAN WHITE: Somebody's got a mike on,  
12 excuse me, Mr. Engel. Excuse me, Mr. Engel, please proceed.

13 MR. ENGEL: I was just looking for help, Mr.  
14 Chairman. I haven't come to a position on this, and I'm  
15 trying to express where I think we're at, so maybe somebody  
16 else could add something one side of the ledger or the other  
17 to help me move forward, thank you.

18 CHAIRMAN WHITE: I have Mr. Umphenour, did I  
19 see you, Mr. Dersham? Mr. Umphenour, then Mr. Dersham.

20 MR. UMPHENOUR: Thank you, Mr. -- Mr. Chair.  
21 I pretty much agree with what Mr. Engel just said. As far as  
22 the dead loss, I don't think there would be much difference in  
23 it because we're only talking about two degrees difference in  
24 the average temperatures, although I know that there's -- like  
25 Mr. Engel said, there's more of a chance of a storm in  
26 November than there is the last two weeks of October. The one  
27 thing I would like to point out, though, and that is the person  
28 that was representing the trawl industry, unless I'm mistaken,  
29 and maybe Mr. Coffey or Mr. Nelson has it in their notes, but  
30 I believe that he said that there would be a potential of 40  
31 vessels that would not be able to -- that normally are  
32 trawling that would possibly not be able to participate in

1 | this fishery and so if they didn't participate in this  
2 | fishery, then that would address over-fishing and it would  
3 | also address management of the fishery, because there wouldn't  
4 | be as many vessels participating, but I wanted to point that -  
5 | - that information out as well and -- and ask maybe Mr. Coffey  
6 | or Mr. Nelson has it in their notes as to how many vessels  
7 | might not participate, how many less vessels, potentially  
8 | might not participate. Mr. Chair.

9 | CHAIRMAN WHITE: Mr. Dersham, then Mr. Coffey,  
10 | then Mr. Nelson.

11 | MR. DERSHAM: I'll let Mr. Coffey go first,  
12 | I'll wait, Mr. Chairman.

13 | CHAIRMAN WHITE: Mr. Coffey, then Mr.  
14 | Nelson.MR. COFFEY: Well, Mr. Chairman, I asked the Department  
15 | of Law about this because I wanted to know about the  
16 | allocation criteria which is found in 16.05.251, subsection E,  
17 | okay, it's on page 21 of our reg book -- statute and reg book.  
18 | And also because of the provision of five in the seasons in  
19 | RC 4, Tab 20, page 36, which says seasons can, which I take to  
20 | be permissive, be timed relative to one another to spread  
21 | fishing effort, to prevent gear saturation and -- and here's  
22 | what I'm concerned about, allow maximum participation in the  
23 | fisheries by all elements of the crab fleets. Okay and -- and  
24 | Mr. Umphenour addressed something that we're all familiar  
25 | with, which is the license limitation program that is going on  
26 | in the federal system right now over at NMFS -- over at the  
27 | North Council and as I said in our earlier presentation, I  
28 | don't think we should, by indirection, do that which we are  
29 | not allowed to do directly, which is limit entry into a  
30 | fishery. If the effect of our action is justified by other  
31 | things, such as the pluses that Mr. Engel identified and  
32 | things in the -- in the management plan, which we've been

1 discussing, and it has a consequence of excluding folks from  
2 the fishery, but we're doing it for legitimate reasons within  
3 the management plan and within our authority, well, so be it,  
4 that happens a lot, the unintended allocative consequence,  
5 because we're facing that all the time. And -- and I'm  
6 perfectly willing to accept those consequences. What I'm not  
7 prepared to do is to take action that is not otherwise  
8 justified simply for the purpose of excluding people from the  
9 fishery, particularly in light of the instructions for maximum  
10 participation in the fishery and particularly for the  
11 allocation aspects of this. However, I would note, for  
12 purposes of discussion, Mr. Chairman, that our allocation  
13 criteria, which the Department of Law tells me is both  
14 appropriate and necessary to be considered here, in light of  
15 the department's comments that this is allocative, and then in  
16 hopes of answering Mr. Umphenour's question to some degree, I  
17 would note these facts, which have been presented to me both  
18 here and in my participation as a member of the committee  
19 which deals with the North Council and our federal  
20 counterparts and we have discussed the history of the  
21 fisheries in -- in terms of the number of participants and --  
22 so I deal with that this way, Mr. Chairman. The history of  
23 the fishery, as I understand it, is that those folks who are  
24 primarily crabbing in nature, are much -- are very much  
25 economically dependent on this and that in the face of a  
26 license limitation program, many vessels have tried to create  
27 a history for themselves in the absence of the economic  
28 dependence, which those who are truly in the fishery  
29 experience. The second criteria is the residents and non-  
30 residents who will participate and we are instructed not to  
31 distinguish between those in the commercial fisheries and we  
32 do not, and I don't see that that's of any significance here.

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1 There's participants of both kinds in both fisheries. This  
2 has nothing to do with providing residents the opportunity to  
3 obtain fish for personal and family consumption. If you're  
4 out there in the Bering Sea in November looking for a personal  
5 use crab, I think you're in the wrong place. Alternative  
6 fisheries resources, however, is a consideration, and as I  
7 understand it, there -- the alternative fishery resource is  
8 available to trawlers is different than it is to crabbers,  
9 they have their own primary fisheries and -- and to the extent  
10 that crabbers are getting into trawl fisheries and trawlers  
11 are getting in crab fisheries, they are, in essence, trying to  
12 create alternative fisheries for themselves, where perhaps  
13 they might not otherwise exist. Six -- five and six deal with  
14 the importance of the economy to the State and local regions.  
15 That analysis is complicated by all sorts of things, CDQ,  
16 IFQ, the onshore, offshore pollack fisheries, I mean the  
17 analysis of that we could probably hire all the experts we've  
18 heard from and give them years to do it and we wouldn't come  
19 up with an answer. My simple answer is that the crab  
20 fisheries and the pollack fisheries are of tremendous  
21 importance to the economy of the state and the local regions  
22 both. And they both need to be fostered and protected and to  
23 the extent that we allow over -- or engage in conduct that  
24 permits over-fishing in one or the other, we are doing  
25 detriment and I worry about over-fishing and the inability to  
26 manage the crab fishery in season, which is the basis of -- or  
27 our position with the council on the number of vessels in the  
28 fishery. Finally, the last one is recreational opportunities,  
29 and again, that's not a consideration. Mr. Chairman, that's  
30 how I view the allocation criteria, and I hope that answers  
31 Mr. Umphenour's question. More specifically, my understanding  
32 was 41 vessels, in that regard, Mr. Umphenour.

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1 CHAIRMAN WHITE: Mr. -- do you need to follow,  
2 Mr. Umphenour? You have two people in front of you, are you  
3 following Mr. Coffey right now, a question to him? Mr.  
4 Umphenour.

5 MR. UMPHENOUR: I just wanted to add two  
6 things to that allocation criteria that were possibly a little  
7 bit different twist, the way I look at it, and that is  
8 alternative resources. The trawler have many more alternative  
9 resources. And then importance of the economy of the State,  
10 the crabbers don't have salmon bycatch and the trawlers do  
11 along with other bycatch, which gives me to favor the crab  
12 fishermen in the allocation criteria and the importance of the  
13 State over the trawl fishermen, because they're not out  
14 killing our other resources that other people depend on, Mr.  
15 Chair.

16 CHAIRMAN WHITE: For your information, Mr.  
17 Umphenour, my question about following Mr. Coffey there was a  
18 question to Mr. Coffey and you then spoke to the allocation  
19 criteria and you are officially a buttinski. Mr. Nelson.

20 MR. NELSON: Thank you, Mr. Chairman. Just on  
21 Mr. Umphenour's question, I did write down that the industry  
22 representative at the committee did say 35 to 40 vessels, Mr.  
23 Chair.

24 CHAIRMAN WHITE: Thank you, Mr. Nelson. Mr.  
25 Dersham, please.

26 MR. DERSHAM: I'll pass right now, Mr.  
27 Chairman.

28 CHAIRMAN WHITE: Anyone in addition? Let's  
29 move here. Do we have cost -- additional comments on cost,  
30 Board Members? Mr. Coffey -- Mr. Umphenour, please.

31 MR. UMPHENOUR: Thank you, Mr. Chair. I don't  
32 see any additional costs for the private person to participate

1 in this fishery if we were to adopt this regulation, Mr.  
2 Chair.

3 CHAIRMAN WHITE: Mr. Coffey.

4 MR. COFFEY: Yeah, Mr. Chairman, you know the  
5 -- I thank you for pointing that out to me. You know what  
6 happens, of course, is we get a lot of information in late in  
7 response to our committee reports, and I just wanted to draw  
8 my fellow Board members' attention to one more piece of paper  
9 which deals with the ...

10 UNIDENTIFIED SPEAKER: RC 132 (UCB's Testimony)

11 MR. COFFEY: ... -- I'm sorry, yeah, which  
12 deals with the allocative nature of the -- purported  
13 allocative nature of this change and -- and basically, that's  
14 RC 132 on page 2, the united catcher boats have submitted an  
15 RC to us and -- and that states that they urge us not to adopt  
16 this proposal because vessels that normally fish in the Bering  
17 Sea pollack fishery would be forced to decide between  
18 participating in the Bering -- Bristol Bay king crab fishery  
19 or the Bering Sea pollack fishery, as the pollack fishery  
20 occurs throughout the month of October. Now I told you all  
21 about that, and that was a choice they have to make, and he  
22 also -- but they also point out, appropriately, the concern  
23 expressed in committee which was also pointed out about the  
24 reduction in yield that occurs before -- you know, if -- if it  
25 goes back in time, there's a danger of reduction in yield and  
26 meat in fill and all of those things, which we also have  
27 discussed. So, but it's important -- and -- and I want the --  
28 the full Board to know that we only had one representative  
29 from the trawl industry sitting in there out of 14 or 15  
30 people, but I also want it known that -- that although he was  
31 not initially a committee member, at the motion of a crabber,  
32 he was included as a committee member so we had the

1 opportunity of hearing that point of view and there's --  
2 there's certainly a lot of discussion, a lot of disagreement  
3 here, but I would like to note that both parties were very  
4 courteous to one another in -- in a very contentious matter  
5 and that because of the actions of the crabbers, the trawler  
6 got to be heard in committee and -- and so that was a -- that  
7 was a good thing to have done and so for that, we should be  
8 thankful to -- to the folks in the crab fleet. Mr. Chairman,  
9 I think that -- I think that's all of the additional RCs that  
10 deal directly with that, Mr. Chairman, although I'll take a  
11 quick look while my fellow Board members are discussing the  
12 latest piece of information.

13 CHAIRMAN WHITE: Board Members, an addition?  
14 I hear no amendments, we're getting close to final action.  
15 People should speak to the allocation criteria or concur. I  
16 have -- Director Mechum, do you have something, sir, excuse  
17 me.

18 MR. MECHUM: I'm sorry, Mr. Chairman, I guess  
19 I might be accused of being a buttinski here also. If the  
20 Board were to change this season opening date, one thing that  
21 has been brought to my attention is that that would also  
22 result in a change in the registration date under the Proposal  
23 304 previously adopted for that fishery, and I assume it would  
24 be the Board intent that if that was changed, that we would  
25 slide that registration date back for that. So, just -- just,  
26 I think a minor point of clarification. Thank you, Mr.  
27 Chairman.

28 CHAIRMAN WHITE: Clarification, Mr. Coffey.

29 MR. COFFEY: Yeah, Mr. Chairman, I -- I would  
30 say this to that and to anything else that's like it. When we  
31 make changes of that nature -- of the nature proposed here,  
32 there's effects across the board on these regulations and

1 certainly, you wouldn't move a fishery back two weeks, for  
2 example, and then expect the registration to take two weeks  
3 after the fishery opened. So I -- I would trust Department of  
4 Law and the department would get that, and -- and I don't  
5 think there's any reason to suspect otherwise.

6 CHAIRMAN WHITE: Well, I could dream up a  
7 couple. Mr. Umphenour.

8 MR. UMPHENOUR: Thank you, Mr. Chair. There  
9 was one other consideration that was brought out by the public  
10 panel members and that is that the market conditions --  
11 because of the timeframe with these -- these crab are -- are  
12 consumed in Japan, that it might be easier to get them into  
13 the Japanese market place with the earlier season, Mr. Chair.

14 CHAIRMAN WHITE: Thank you, Mr. Umphenour.  
15 Additional comments? Mr. Coffey. MR. COFFEY: I heard  
16 the opposite, so.

17 CHAIRMAN WHITE: Well, let's clear it up.

18 MR. COFFEY: Well, I heard from a processor, -  
19 - or excuse me -- yeah, a processor that if we move the season  
20 up, that we would be hurting the Japanese market and we'd be  
21 better off to move the season back, so I'm not sure which is  
22 accurate.

23 CHAIRMAN WHITE: Mr. Morrison, do you have  
24 anything on market conditions, sir?

25 MR. MORRISON: Mr. Chairman, no, I don't.  
26 However, one additional comment that -- that we probably  
27 should make now, we do have that incidental tanner crab  
28 fishery that -- that occurs during the Bristol Bay red crab  
29 fishery and that would move the -- the opening date of that  
30 fishery back to whatever the -- the date you set was as well.

31

32 UNIDENTIFIED SPEAKER: I missed it; I was

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1 looking at something else.

2 CHAIRMAN WHITE: Do you feel like we have  
3 enough intent for you all here? Director Mechum?

4 MR. MECHUM: Yes, we do, Mr. Chairman, thank  
5 you.

6 CHAIRMAN WHITE: Thank you, sir. Mr.  
7 Umphenour, please.

8 MR. UMPHENOUR: Thank you, Mr. Chair. What --  
9 what Mr. Coffey said was true with the original proposal,  
10 which was opening date of the 10th of October, but then I  
11 believe that individual said that the 15th of October they  
12 could live with, but not the 10th, if my memory serves me  
13 correctly.

14 UNIDENTIFIED SPEAKER: Yes.

15 MR. UMPHENOUR: Mr. Chair.

16 CHAIRMAN WHITE: Mr. Coffey -- Mr. Coffey.

17 MR. COFFEY: With that clarification, I agree.

18 CHAIRMAN WHITE: Other comments, Board  
19 Members? Anything in addition? Dr. Krygier, are we within  
20 the FMP and the consideration of national standards,  
21 adequately, sir?

22 DOCTOR KRYGIER: Mr. Chairman, I believe  
23 you've dealt with the issues and -- and debated the pros and  
24 cons and most of these things like the national standards,  
25 you're going to be balancing one against the other, you're not  
26 going to be 100 percent with one, without being in slight  
27 conflict with the other. So I think this debate that you had  
28 going back and forth on these and the balancing of the various  
29 components of the standards and the -- and the guidelines and  
30 everything, I think you're okay on that.

31 CHAIRMAN WHITE: Thank you, sir. From the  
32 Department of Law, are considerations of costs and the

1 allocation criteria thorough enough for the -- the record, Mr.  
2 Nelson?

3 MR. NELSON: Mr. Chairman, I think the Board -  
4 - the Board has done an admirable job.

5 CHAIRMAN WHITE: Mr. Umphenour, do you have  
6 anything in addition?

7 MR. UMPHENOUR: Just a little summary, Mr.  
8 Chair. I'm going to vote -- I'm going to be in favor of this  
9 proposal. I know that when you go through the standard and et  
10 cetera, that the -- that we're required to go through because  
11 this is a federal fishery, that to some people it might appear  
12 that there's kind of a tie here, but I don't look at it that  
13 way. I can remember, and one of the staff members just  
14 pointed it out, that there could have been different year  
15 classes when they had the fishery opening, the end of  
16 September, the 25th of September, rather than the first of  
17 November that the actual outside size of the crabs were -- was  
18 considerable amount smaller than what they've been in recent  
19 years and so I -- the question of fill in the crabs to me is -  
20 - is not as important as the question of safety and better  
21 weather conditions. So I'm going to be voting in favor of  
22 this proposal, Mr. Chair.

23 CHAIRMAN WHITE: Director Mechum, any error or  
24 omissions in our considerations in the matter that's before  
25 us, sir?

26 MR. MECHUM: No, Mr. Chairman.

27 CHAIRMAN WHITE: Mr. Morrison, on errors and  
28 omissions?

29 MR. MORRISON: No comments, no.

30 CHAIRMAN WHITE: Any further comments from the  
31 Department of Law, Mr. Nelson?

32 MR. NELSON: No, Mr. Chairman.

1 MR. DERSHAM: Question.  
2 CHAIRMAN WHITE: Question's been called by Mr.  
3 Dersham. Ms. Cote.  
4 MS. COTE: Final action on Proposal 287 as  
5 amended. Dersham?  
6 MR. DERSHAM: Yes. MS. COTE: Nelson?  
7 MR. NELSON: Yes.  
8 MS. COTE: Coffey?  
9 MR. COFFEY: Yes.  
10 MS. COTE: White?  
11 CHAIRMAN WHITE: Yes.  
12 MS. COTE: Umphenour?  
13 MR. UMPHENOUR: Yes.  
14 MS. COTE: Engel?  
15 MR. ENGEL: No.  
16 MS. COTE: Motion carries, five-one, one, Mr.  
17 Chair.  
18 [End of Requested Portion]  
19

Substitute Language for Proposal 291 — FINAL VERSION

**5 AAC 34.053 OPERATION OF OTHER [POT] GEAR.** Unless otherwise specified in 5 AAC 31 – 5 AAC 38,

- (1) A person or vessel that operates commercial, subsistence, personal use, or sport pots during the 14 days immediately before the opening of a commercial king crab season in a king crab registration area may not participate in the commercial king crab fishery in that area, or with respect to Registration Area Q, a person or vessel that operates commercial, subsistence, personal use, or sport pots in the 14 days immediately prior to the opening of the commercial king crab fishery in that district or section, may not participate in the commercial king crab fishery in that district or section or, with respect to Registration Area T, a person or vessel that operates commercial, subsistence, personal use, or sport pots or trawl gear in that registration area in the 30 days immediately prior to the opening of the commercial red king crab fishery in that area may not participate in the Area T commercial red king crab fishery.

In addition, a person or vessel that participates in a commercial king crab fishery in a king crab registration area, or with respect to Registration Area Q, in that district or section of Registration Area Q where the fishing with pots occurred, may not operate commercial, subsistence, personal use, or sport pots in the 14 days immediately following the closure of the commercial king crab season, and with respect to Registration Area T, a person or vessel that participates in a commercial king crab fishery in that king crab registration area may not operate commercial, subsistence, personal use, or sport pots in the 30 days immediately following the closure of the commercial king crab season in that area.



A vessel or person may operate commercial, subsistence, personal use, or sport pots in a king crab registration area after putting king crab pots in storage as specified in 5 AAC 34.052, and unless the registration is already invalidated under 5 AAC 34.020(k), after invalidating the vessel's king crab registration by contacting in person a local representative of the department.

- (2) During a commercial king crab fishery, a person or vessel may stop participating in the king crab fishery and instead operate commercial pots other than king crab pots, if the person's or vessel's king crab pots are put in storage as specified under 5 AAC 34.052, and the vessel owner, or the owner's agent contacts a department representative in person and requests that the king crab registration be invalidated.

**PROPOSAL 291** - 5 AAC 34.8XX. OPERATION OF OTHER POT GEAR IN REGISTRATION AREA T. Extend the exclusion period when no pot gear could be fished from 14 days to 30 days prior to the opening of Bristol Bay (AREA T) commercial king crab fishing season as follows:

5 AAC 34.8XX. OPERATION OF OTHER POT GEAR IN REGISTRATION AREA T. In Registration Area T, a person or vessel that operates commercial, subsistence, personal use, or sport pots during the 30 days immediately before the opening of a commercial king crab season in Registration Area T may not participate in the commercial king crab fishery in Registration Area T.

**PROBLEM:** Current regulations under 5 AAC 34.053 prevent a vessel which intends to participate in a king crab fishery in a specific king crab registration area from operating any type of pot gear in that king crab registration area for the 14 days immediately prior to the commercial king crab season. This 14 day exclusion period is intended to prevent vessels from prospecting for king crabs while fishing for another species just prior to the commercial king crab fishery in that area. Increased numbers of Bristol Bay king crab fishermen have been participating in the Bering Sea cod pot fishery during October. NMFS observer data shows that king crab bycatch has also been increasing during October. It appears some crab fishermen are participating in the pot cod fishery to gain information on the king crab distribution just prior to the commercial fishery. This proprietary information enables fishermen in these areas to locate crabs quickly at the start of a commercial fishery resulting in accelerated catches. Because of the fast pace of the king crab fishery, managers have had difficulty restricting harvests to guideline levels.

**WHAT WILL HAPPEN IF NOTHING IS DONE?:** A growing number of fishermen in the Bristol Bay, management area will continue to participate in other pot fisheries allowing them to gain information on king crab distribution in the several weeks leading up to the current 14 day exclusion period prior to the commercial king crab season. They will then be able to use this king crab distribution information to more readily locate areas of high crab concentrations early in the commercial king crab fishery.

**WHO IS LIKELY TO BENEFIT?** The Department would benefit by longer seasons over which to manage the king crab fishery in the Bristol Bay, management area. The public would benefit from commercial fisheries which did not exceed the harvest guideline.

**WHO IS LIKELY TO SUFFER?** Fishermen wishing to participate in other fisheries with pot gear in the Bristol Bay Area during the 15 to 30 day period prior to the king crab fishery.

**OTHER SOLUTIONS CONSIDERED:** Maintain status quo.

**PROPOSED BY:** Alaska Department of Fish and Game.

(HQ-98-F-228)

**PROPOSAL 291**

\*\*\*\*\*

**FAVOR**

**OPPOSE**

PC37 - PNCIAC

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**FINAL ACTION:** Carries    Fails    Tabled    No Action    See Prop. # \_\_\_\_\_

ABSENT \_\_\_\_\_ ABSTAIN \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_ TAPE # \_\_\_\_\_



1 participants and -- and that's -- that just seems to be equity  
2 to me, Mr. Chairman. I -- I would have a question for -- for  
3 Mr. -- Dr. Krygier if he could answer it, and -- and that  
4 would be given this circumstance of -- is there anything in  
5 the Fisheries Management Plan or anything else that requires  
6 us to address that? I couldn't find anything, but I'm not  
7 sure.

8 CHAIRMAN WHITE: Dr. Krygier for Mr. Coffey,  
9 please.

10 MR. KRYGIER: Well, I don't -- I don't see  
11 this as being something that's -- that it would be a -- in  
12 Category 2, which is what you'd be concerned of as Category 3.  
13 And so, I think that you just -- basically as long as you're  
14 consistent with the restrictions placed on, you know, general  
15 paying attention to the national standards and the FMP, the  
16 criteria -- the goals and criteria, I think you're all right  
17 and there's some of the -- the criteria, the objectives that  
18 are probably useful to pay attention to in there. And so, I  
19 think that -- that would cover that. One other quick little  
20 thing, I didn't get a doctorate. I did published my thesis;  
21 but I didn't actually complete the course work for my  
22 doctorate. So it's Mr. Krygier, thank you.

23 CHAIRMAN WHITE: Well, that ruined a career.  
24 Sorry, Earl. Mr. Coffey.

25 MR. COFFEY: I note here on page 40 of RC 4

PAGE 2

1 Tab 20 ...

2 UNIDENTIFIED SPEAKER: [Indisc.].

3 MR. COFFEY: ... the state government is not  
4 limited to only the management measures described in the FMP.  
5 I couldn't find anything that talks about not letting pot  
6 fishermen into the fishery if they fished in another fishery  
7 30 days ahead of time or anything like that, but it -- it --  
8 if, as Mr. Krygier said, all we need do is be consistent with  
9 the Magnuson Stevens Act and the FMP, and I believe we are  
10 doing that, because we are providing for such things as  
11 allowing, you know, -- for example, this allows for -- takes  
12 into account the fisheries resources in -- in the communities  
13 and by -- by requiring a fair start, you're not giving  
14 advantage to one area or one community over another. And I've  
15 been told it's fair and equitable to all fishermen under 4A,  
16 which is -- there is another standard. So, you know, I -- I  
17 see this as being something that meets the standards. And  
18 it's not specifically there so it must be under Category 3,  
19 and I think we've met those criteria. I also don't see any  
20 cost to the members of the public from this, Mr. Chairman.

21 CHAIRMAN WHITE: Mr. Dersham.

22 MR. DERSHAM: Thank you, Mr. Chairman. Since  
23 the substitute language also addresses trawl gear, I would  
24 refer Board Members to RC 135, the Committee D report and page  
25 15 of that is the discussion of Proposal 355, which relates to

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1 -- in part to the trawl gear part of this substitute language,  
2 Mr. Chairman.

3 CHAIRMAN WHITE: Run that by me again, Mr.  
4 Dersham.

5 MR. DERSHAM: Mr. Chairman, my understanding  
6 is this proposal originally only addressed pot gear. The  
7 substitute language that's now before us also addresses trawl  
8 gear in that 30-day period and that substitute -- part of the  
9 substitute language came out of the discussion and the Board  
10 committee recommendation from Committee D for Proposal 355,  
11 which we have not gotten to that committee yet, but since that  
12 -- that portion of that recommendation is contained in this  
13 substitute language, I direct fellow Board Members to that  
14 discussion, which was on page 15 of RC 135.

15 CHAIRMAN WHITE: Goat rope. Committee  
16 Chairman Dersham and Coffey, a five minute caucus before we go  
17 -- get this one any farther off the rope.

18 [Off Record]

19 [On Record]

20 CHAIRMAN WHITE: [Tape begins mid-speech] ...  
21 March 24th. Mr. Coffey, could you speak to the concerns that  
22 Mr. Dersham raised, please. Go.

23 MR. COFFEY: No, I'm sorry. It's -- I'm glad  
24 you're letting us go home early, Mr. Chairman. I'm obviously  
25 losing it here. I -- the concerns that Mr. Dersham spoke to

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1 were accurate. Mr. Coffey, me, I didn't realize the  
2 provisions of the proposal that were in front of us. I missed  
3 -- missed that specific part. Mr. Dersham pointed it out to  
4 me. I'm back on track; he's right.

5 CHAIRMAN WHITE: Mr. Dersham, additional  
6 comment, sir.

7 MR. DERSHAM: Mr. Chairman, in -- in Committee  
8 D, the -- the discussion of Proposal 355 centered around --  
9 centered around the perceived problem with trawl vessels  
10 having an unfair advantage over crab fishers, in that they can  
11 -- they can use pelagic gear in the pollack fishery up to the  
12 time they register for the crab fishery. And we had a lot of  
13 discussion about that issue in Committee D. There was -- the  
14 data from the department was presented, as I remember it, I'll  
15 let them expand, but there -- there are some -- when you look  
16 at king crab bycatch in the trawl fisheries, there is a spike  
17 that occurs in early October that seems suspicious, but then  
18 there's other data that shows that the trawl vessels who --  
19 that also participate in the Bristol Bay king crab fishery do  
20 not, on average, do significantly better than the -- than the  
21 -- than the ones that haven't been fishing pollack in the area  
22 in the 30 days before, so there was -- there was different  
23 data from the department, there was a lot of comments from the  
24 industry, there was comments from the industry, given that  
25 countering that and -- and it was a fairly long discussion.

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1 I'll let the department make a few comments about the  
2 discussion as well, Mr. Chairman.

3 CHAIRMAN WHITE: Yes, sir.

4 MR. BOWERS: Mr. Chairman, in regards to the -  
5 - the data that we looked at dealing with bycatch of red king  
6 crab, in these trawl fisheries, at least in years since 1993,  
7 in years when the red king crab fishery has been open in Area  
8 T, the bycatch of red king crab has peaked in late September  
9 and early October. Basically, it's increased from 4,000  
10 animals up to 7,000 animals in -- in that -- that -- that  
11 period and that is -- that doesn't appear to be the -- the  
12 case in years when the -- the Bristol Bay red king crab  
13 fishery is closed. Speaking to the vessel performance, in  
14 terms of red king crab catch, these cross-over trawl vessels  
15 in -- in some years, they have done -- they have -- their  
16 average catch has been slightly more -- in one year it was  
17 slightly more, about 420 pounds more than the fleet average  
18 and in two years, it was less. One year it was about 4,700  
19 pounds less and in another year it was about 580 pounds less.  
20 In the -- in -- and in two of those years, that was not a  
21 statistically significant difference in -- in the year when  
22 the difference was 4,700 pounds, that -- that was  
23 statistically significant, however it was -- wasn't highly  
24 significant.

25 CHAIRMAN WHITE: Anything in addition for Mr.

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1 Bowers, Mr. Dersham?

2 MR. DERSHAM: Mr. Chairman, just to add that -  
3 - that one industry response to the fact that the trawlers had  
4 basically done the fleet average, a little better in one case,  
5 was that -- that the way the -- their vessels are equipped  
6 that it -- that it was surprising to that industry  
7 representative that they had done that well and that -- just  
8 that they done as well as the fleet average overall would  
9 suggest to that industry representative that they had found an  
10 advantage, Mr. Chairman. And just an addition that the -- the  
11 Board committee recommendation from Committee D was to support  
12 this -- this closure on trawl and pot gear in -- in these 30  
13 days prior to the season and that's why this -- this has  
14 become part of this substitute language for Proposal 291 as  
15 staff found this the most efficient way to incorporate this  
16 language, Mr. Chairman.

17 CHAIRMAN WHITE: Thank you very much, Mr.  
18 Dersham. Mr. Coffey.

19 MR. COFFEY: Yeah, Mr. Chairman. Looking  
20 first to the national standards, I think the -- one of the  
21 primary considerations here should be in 4 -- or section 4,  
22 which deals with fair and equitable to all fishermen. I -- I  
23 think we all know that the -- the survey that's conducted on  
24 Bering Sea king crab is done with a trawl, a trawl is a very  
25 effective survey device, mechanism, method and -- and

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1 therefore we have that and -- and so if someone is permitted  
2 to trawl in the area, then what I would be concerned about is  
3 going fishing the next day, or the next few days or however  
4 long it takes for the data, which they were able to trawl up  
5 to become out outmoded and they would have an unfair and  
6 inequitable advantage over those fishermen who are not  
7 permitted to trawl in the period prior to the fishery. If you  
8 did that, you would allow an individual, corporation or other  
9 entity to -- to potentially acquire an excessive share of that  
10 fishery which is another thing we're suppose to avoid. Now,  
11 Mr. Chairman, I'm also advised that -- by the Department of  
12 Law, that we should consider the allocation criteria of  
13 16.05.251(e) in making our decisions both relative to the pot  
14 fishers, who will be excluded, assuming they could  
15 subsequently come in and fish in the king crab fishery, and  
16 the trawl fishermen who could subsequently come in. Mr.  
17 Chairman, it's obvious to all concerned that my -- my mind is  
18 going flat. I haven't done -- I missed a lot of things  
19 lately, so I'm going to do one of those and I'll leave someone  
20 else the analysis of the other. My first analysis on the  
21 allocation criteria as found in the statute, deals with the  
22 pot fishery. Mr. Chairman, the -- the pot fishery is of -- in  
23 state waters, is of relatively new duration, and also a  
24 relatively small number of fishers engaged in this fishery.  
25 We did not hear any evidence of any substantial or significant

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1 cross-over into the other fisheries, and those fishers have  
2 concurred through their spokesman that this ought to be  
3 applicable to them. So, the 30 day -- excuse me, the closure  
4 for the period, 30 days immediately prior in the one fishery  
5 and 14 days in the other. Also, the fourth criteria seems to  
6 be applicable, which is the availability of alternate  
7 fisheries resources. Obviously, if they are in the pot  
8 fishery for other species, they have an alternative to the  
9 crab fishery, almost definitional, Mr. Chairman. The  
10 importance of each fishery, both to the state and to the  
11 economy of the region is difficult to measure, the difference  
12 between the two relative to these two different pot fisheries,  
13 but I would think that the value of the king crab fishery  
14 probably is substantially significantly greater than that of  
15 the pot fisheries that take place in the period immediately 13  
16 or 40 -- excuse me, 14 or 30 days immediately prior to this  
17 fishery. In that regard, I think it's somewhat more important  
18 then to protect the -- the more valuable fishery from some of  
19 the risks attendant upon not having a fair start, Mr.  
20 Chairman. And finally, the recreational opportunities, Mr.  
21 Chairman, are not applicable here so I think, on balance, when  
22 you look at the allocation criteria between those engaged in  
23 pot fisheries for other than king crab and those engaged in  
24 pot fisheries for the king crab which starts later, it weighs  
25 on balance as being -- as favoring this exclusion, Mr.

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1 Chairman, I'd like someone else to do the trawler if they  
2 could.

3 CHAIRMAN WHITE: Mr. Dersham, please.

4 MR. DERSHAM: Mr. Chairman, as Mr. Coffey  
5 found when he went through this as a trawl versus crab issue  
6 in the prior proposal, most of these allocation criteria  
7 pretty much balance out, but the one that jumps out to me  
8 first is - is number 4, again, the availability of all current  
9 fisheries resources, which, by the very definition of this --  
10 the way this proposal works of forcing people to choose, it --  
11 it shows that those who would be excluded would be excluded  
12 because they'd be choosing to fish in another fishery which,  
13 by definition, shows that they have an alternative fishery  
14 resource and would be protecting those who are most dependent  
15 on the crab fishery, Mr. Chairman.

16 CHAIRMAN WHITE: Thank you, sir. Mr. Engel in  
17 addition.

18 MR. ENGEL: Thank you, Mr. Chairman. We've  
19 talked a lot about fair start and some of these things, but I  
20 see this as something more than that. By utilizing pots or  
21 trawl gear or any form of gear to -- to determine the  
22 whereabouts, the location of the crabs in Bristol Bay, means  
23 that you're going to increase the fishing season, and we  
24 already know we're dealing with a fishery that was, not too  
25 many years ago, completely closed because of low abundance,

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1 it's starting to recover, but nonetheless, we're faced with a  
2 very short fishing season, anywhere from four to six days, I  
3 think in the last couple years, which is almost unmanageable,  
4 so by allowing prospecting and -- and putting people  
5 immediately up -- advantage immediately on, that just  
6 complicates the very tenet of this fishery that we're trying  
7 to get more time and so I look at the conservation aspect of  
8 this thing, to try to maintain a viable and -- and a king crab  
9 resource that is going to recover, and -- and I see that when  
10 we allow situations where some people are taking advantage and  
11 I would -- was talking to Mr. Nelson that, indeed, they have  
12 taken people to court that were prospecting -- various type  
13 pot fishermen, I don't know whether they were using crab --  
14 cod pots or whatever, so there certainly is a major incentive  
15 to do this, there has been some occasions, I think he said six  
16 or eight but he can speak for himself, where they've actually  
17 prosecuted people and all this is contrary to what we're  
18 trying to do with the Bristol Bay red kind crab, because gosh,  
19 when you're down to four or five days and you're giving  
20 somebody this kind of advantage, we heard of some of the other  
21 committees down in tanner -- tanner crab country in  
22 Southeastern Alaska that, man, this is a way of life to try to  
23 do this, because that first day or two is really big time, if  
24 you know where to lay out your first set of pots. So, having  
25 said that, I -- I -- I see this as much, much more than a

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1 level playing field, although I -- I -- it's certainly an  
2 important issue. I see this as something that could be  
3 contrary to our attempts to rebuild this -- this crab  
4 population that was very recently closed and so if that's the  
5 case, I can certainly find that the Magnuson-Stevens national  
6 standard number 1, conservation management measures shall  
7 prevent overfishing, while achieving, you know, the optimum  
8 yield so far. This could be counterproductive to this, this  
9 prospecting type, getting right on top of the crabs.  
10 Obviously, others have spoke before at the number 4A, fair and  
11 equitable start, so those are -- there's conservation overtone  
12 to this, Mr. Chairman. I think that's real important for us  
13 to -- I think other Board Members have recognized this, too,  
14 but I -- I needed to clarify that for the record. The only  
15 thing I have a problem with at this point in time is what's  
16 the difference between -- the department brought this initial  
17 proposal that we're working off and blending other proposals  
18 into, was going from 14 to 30 days, they must have had a --  
19 some reason for this expansion, you know, 14 days was not  
20 enough, but I'd like -- if I may, Mr. Chairman, have them  
21 explain the rationale to -- to give even greater separation to  
22 this possibility of getting on the stocks -- this prospecting  
23 aspect, Mr. Chairman.

24 CHAIRMAN WHITE: Mr. Morrison for Mr. Engel,  
25 please.

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1 MR. MORRISON: Mr. Chairman, Mr. Engel, you  
2 summarized it pretty well, Mr. Engle. I -- I don't believe  
3 that -- that -- I think we have sufficient information to show  
4 that -- that red king crab don't move all that much over a  
5 two-week period of time, and with all of the anecdotal  
6 information that we had, people were coming in complaining  
7 about people being on the grounds in that 15- to 30-day period  
8 under the auspices of cod fishing, when, in fact, they really  
9 were exploratory fishing. And you're exactly right, we really  
10 didn't want to provide people with information that would  
11 allow them to get right on the crab, certainly from a fair  
12 start perspective, but also just in terms of speeding up this  
13 fishery. So, that was the intent of our original proposal.  
14 As I indicated earlier, we did go back and look, we wanted to  
15 have some feeling for if -- if there was some legitimate cod  
16 fishing going on, we certainly did want to take that into  
17 account. But our analysis showed that really there was only  
18 five vessels that -- that were actually making landings, which  
19 indicated to us that if there were additional vessels that  
20 were up there fishing, they weren't truly cod fishing, and --  
21 and -- and then we were able to -- to really delineate that  
22 line at -- at Amak Island and that pretty much eliminated all  
23 of the landings and so that was the -- that was the main  
24 impetus behind the proposal to make it 30 days.

25 CHAIRMAN WHITE: Mr. Engel to follow, sir.

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1 MR. ENGEL: Thank you for that clarification.  
2 Another thing that strikes me is in the FMP, the fishing  
3 season number 6 there, to reduce the cost of enforcement and  
4 management before, during and after the season, both of which  
5 affect by timing in the area of the fisheries for king and  
6 tanner crab and other resources. Seemed to me by having this  
7 broader separation, it would be a benefit to the enforcement  
8 folks also to address this concern and you know it's been  
9 identified because the people have been taking it to court  
10 [indisc.] this. So I guess I'd like to -- well, I have one  
11 other question -- I'd like to ask a couple questions of  
12 Department of Law, if I may, Mr. Chairman ...

13 CHAIRMAN WHITE: Please proceed, sir.

14 MR. ENGEL: ... and Public Safety. In -- in  
15 the substitute language that we have before us, I'm a little  
16 bit confused by -- it's got all this reference to the 14 days  
17 before which is the existing reference and then it looked like  
18 we tagged on the 30 days after and we don't have the -- the  
19 brackets and lines. What's going on with -- with that? Am I  
20 misinterpreting the -- I'm talking about page 18, substitute  
21 language for Proposal 291, starts off talking about all the 14  
22 day before for the pots and then ultimately, it gets to the  
23 issue we're talking about, towards the end of the first  
24 paragraph, why do we have that 14-day language there, that  
25 sounds to me like the existing regulation. Could somebody

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1 explain that to me, Mr. Chairman?

2 CHAIRMAN WHITE: Mr. Coffey.

3 MR. COFFEY: I can't explain it.

4 CHAIRMAN WHITE: Mr. Morrison.

5 UNIDENTIFIED SPEAKER: Yeah, it is.

6 MR. MORRISON: Mr. Chairman, the front end of  
7 that language addresses a different registration area, it  
8 addresses registration Area Q, the -- the latter part of that  
9 addresses registration Area T. They're two different king  
10 crab registration areas.

11 CHAIRMAN WHITE: Mr. Coffey to [indisc.].

12 MR. COFFEY: Yeah, Mr. Engel's right, I mean  
13 the -- the first part of it is -- is there, a person or vessel  
14 that operates commercial subsistence and so on and so forth,  
15 personal use or sports pots during, that's already there, that  
16 language is there in Area Q. So, I mean, if you were going to  
17 do this the way you would do legislative drafting, there  
18 should be some stuff underlined and so on and so forth  
19 [indisc.].

20 MR. MORRISON: Mr. Chairman, I think this --  
21 we made some subtle changes, I think and -- and I think we  
22 were trying to introduce this as -- as well as amended  
23 language or ...

24 CHAIRMAN WHITE: Mr. Donaldson, can you bring  
25 light to this darkness?

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1 MR. DONALDSON: I think so. As I recall that  
2 when we were going and trying to develop language to -- to  
3 modify 053, we looked at the existing language and found it  
4 very, very confusing and so staff took a shot at rewriting the  
5 paragraph without changing any of the intent, but adding the  
6 30-day requirement for registration Area T, so we found the  
7 existing language to be very confusing and the intent would be  
8 to repeal the existing and then readopt this new language.

9 CHAIRMAN WHITE: Are you on board, Mr. Engel?

10 MR. ENGEL: I'm satisfied, I just wanted to  
11 make sure ...

12 CHAIRMAN WHITE: Mr. Coffey, how about  
13 yourself?

14 MR. COFFEY: Yeah, Mr. Chairman, I read the  
15 statute -- or the, excuse me, the regulation and I can see  
16 exactly what Mr. Donaldson means about inarticulate regulatory  
17 language is what's existing in the substitute language is --  
18 is much clearer, but the first part is to Area Q and the 14  
19 days doesn't change what's existing, it merely puts it in more  
20 understandable language, Mr. Chairman.

21 CHAIRMAN WHITE: I cut you off, Mr. Engel, did  
22 you have something in addition, sir?

23 MR. ENGEL: Yes, Mr. Chairman, I -- I'm clear  
24 on this other aspect, I agree it is clear, I just couldn't  
25 relate to my regulation book to figure it out, so. I would

1 ask Public Safety what extension, Mr. Chairman, of going from  
2 a 14 day to a 30 day, what benefits they might see in --  
3 addressing this issue that the Board is looking at?

4 CHAIRMAN WHITE: Captain King vamoosed.

5 MR. ENGEL: He's gone, okay. Department of  
6 Law -- ...

7 UNIDENTIFIED SPEAKER: You can ask Art.

8 CHAIRMAN WHITE: How about ...

9 MR. ENGEL: .... Department of Law then.

10 CHAIRMAN WHITE: You could ask Art. Mr.  
11 Nelson from the Department of Law.

12 UNIDENTIFIED SPEAKER: Getting late.

13 MR. NELSON: Mr. Chairman, the question, one  
14 more time.

15 MR. ENGEL: Have you taken anybody to court  
16 that's tried to take advantage of a fair start and get on the  
17 crabs earlier, which this issue addresses, Mr. Chairman.

18 CHAIRMAN WHITE: Mr. Nelson for Mr. Engel.

19 MR. NELSON: Mr. Chairman, I actually do  
20 enforcement work for Fish and Wildlife Protection quite a bit,  
21 and I have been involved in -- in a number of those cases in  
22 the past few years and we have found people that like to  
23 prospect. We made a couple of -- several cases with the King  
24 Air with the infrared -- or forward looking infrared and we've  
25 caught other people. Our practice is when we do find somebody

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1 who's operating pot gear in the days before the season opens,  
2 we inform them that we're aware of that, and that if they  
3 participated in the season, we believe their -- the fishing  
4 will be all illegal and if they go ahead and participated --  
5 some -- some have gone ahead and participated and some have  
6 taken their boats out of the fishery and haven't participated  
7 after a warning. We don't -- we don't permit them from  
8 fishing in it because of the risk that at the -- in the end  
9 they might be acquitted and -- and lose the season unjustly,  
10 so we wait until they're done with their season, we seize that  
11 entire load and -- and cite -- write them a ticket and take  
12 them into court. So, that's -- but that -- it is a common --  
13 quite a common thing, every year, it seems like we find  
14 several.

15 CHAIRMAN WHITE: Mr. Engel, do you have  
16 anything in addition on Mr. Nelson's [indisc.] measures?

17 MR. ENGEL: No, Mr. Chairman, I just had that  
18 ex parte communication with Mr. Nelson I wanted to share with  
19 the other Board Members. Mr. Chairman, thank you.

20 CHAIRMAN WHITE: Mr. Nelson, please from the  
21 Board of Fisheries, not law.

22 MR. NELSON: Thank you, Mr. Chair, I just  
23 wanted to go to the record with PC number 5, it was in  
24 opposition to Proposal 291. Thank you, Mr. Chair.

25 CHAIRMAN WHITE: Thank you, sir. Mr. Coffey.

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1 MR. COFFEY: Yeah, PNCIAC, Mr. Chairman on  
2 what's Public Comment 37, page 5 of 22, supports 291 and  
3 provided it extends the prohibition on use of groundfish gear  
4 from 14 to 30 days and -- and applies to all gear types and is  
5 not just restricted to pot gear. And they go on to tell us  
6 that trawlers fishing for pollack and or yellow fin are  
7 presently allowed to fish with trawl gear in Area T, which is  
8 the area in question, right up to the time of tank inspection.  
9 In 1998, 35 pollack vessels participated in the Bristol Bay  
10 king crab fishery. These vessels were trawling for pollack in  
11 Area T into the last week of October, when the fishery is  
12 closed. With the new sea lion habitat protection regulations,  
13 it is likely that the pollack B season will continue to remain  
14 open until the last week in October in the near future and  
15 present opportunities to prospect -- to prospect with trawl  
16 gear. Mr. Chairman, so what we had -- what this would do  
17 would, in essence, force those folks to make a choice and not  
18 afford them the sorts of things that Mr. Engel has been  
19 talking about and -- and Mr. Nelson has been talking about.  
20 Obviously, there is a great advantage to being able to  
21 prospect or at least, it seems to be that way, otherwise  
22 people wouldn't be doing it year after year after year and Mr.  
23 Nelson might be doing -- Mr. Nelson with the Department of Law  
24 might be doing other things besides prosecuting prospectors.  
25 Mr. Chairman.

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1 CHAIRMAN WHITE: Mr. Umphenour.

2 MR. UMPHENOUR: Thank you, Mr. Chair. I think  
3 that under the national standards, this also fits into number  
4 9, which is conservation and management measures that minimize  
5 bycatch, because the trawlers, if they're -- if they're on  
6 purpose looking for crab, then they're going to be bycatching  
7 them, plus that's not counting the ones that they're  
8 squashing, Mr. Chair.

9 CHAIRMAN WHITE: Mr. Krygier, how are we doing  
10 with the national standards and the FMP, sir?

11 MR. KRYGIER: Good. This covers -- covers --  
12 covers it well, this is a Category 3 so you just have to do an  
13 overview. You don't have to hit the -- a list of framework  
14 issues, okay.

15 CHAIRMAN WHITE: Very concise, Earl, it's kind  
16 of like when [indisc.]. Mr. Nelson as to the allocation  
17 criteria and how it was spoken to.

18 MR. NELSON: Very good job, thanks.

19 CHAIRMAN WHITE: Mr. Engel, please.

20 MR. ENGEL: Just one final point of  
21 clarification. Is my memory correct that 30 percent of the  
22 trawl vessels in this area carry observers, or is it some  
23 different percentage? Can somebody help me on that?

24 CHAIRMAN WHITE: Mr. Bowers.

25 MR. BOWERS: Mr. Chairman, Mr. Engel, for --

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1 for trawl vessels under 125 feet, they're required to carry an  
2 observer for 30 percent of their fishing activity per quarter  
3 and for vessels over 125 feet in length, -- 125 feet in length  
4 or greater, they are required to carry an observer 100 percent  
5 of the time.

6 CHAIRMAN WHITE: Mr. Engel to follow.

7 MR. ENGEL: How many vessels are in the small  
8 category, which -- I mean is there an imbalance between this  
9 or -- if it's 100 percent of the time, there's not a big  
10 problem, if it's 30 percent of the time, there could be a big  
11 problem, that's what I'm trying -- how many vessels --  
12 disparity between vessels?

13 CHAIRMAN WHITE: Mr. Bowers.

14 MR. BOWERS: Mr. Chairman, Mr. Engel, I don't  
15 -- I don't have a good feeling on the number of -- or idea on  
16 that -- not -- I'm not sure on what that number would be.

17 CHAIRMAN WHITE: Mr. Morrison.

18 MR. MORRISON: Mr. Chairman, I -- I don't know  
19 that either, but in the Bristol Bay red crab fleet, about 60  
20 percent of the vessels are -- are under 125 and -- and I don't  
21 know if that adds any perspective or not.

22 CHAIRMAN WHITE: Mr. Engel.

23 MR. ENGEL: Yeah, that helps some, Mr.  
24 Chairman. I don't see any cost to the private person  
25 particularly associated with this. There certainly could be

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1 costs associated with lost harvest opportunity, but that's not  
2 what [indisc.] talk about, other type of tangible costs, Mr.  
3 Chairman.

4 MR. UMPHENOUR: Question.

5 CHAIRMAN WHITE: Board Members, any other  
6 discussion? Errors and omissions, Director Mecum, anything in  
7 addition, sir?

8 MR. MECUM: No, Mr. Chair.

9 CHAIRMAN WHITE: Mr. Morrison on errors and  
10 omissions and the Board's deliberation in the matters before  
11 us.

12 MR. MORRISON: Mr. Chairman, I just have one  
13 other comment. This -- this would affect CDQ vessels that --  
14 that -- should we ever decide to have an -- a pre-Bristol Bay  
15 red crab fishery CDQ, which at this time, we don't because of  
16 the -- the size of that GHL, but this would also affect those  
17 -- those vessels. In other words, they -- if they  
18 participated in that area in the 30 days before, then they  
19 would not be able to participate in the -- the regulations  
20 would be applied to them the same as -- as any other vessel  
21 and no -- no errors.

22 CHAIRMAN WHITE: Thank you, sir. Mr. Coffey  
23 for Mr. Morrison.

24 MR. COFFEY: So on the one hand we provide for  
25 the CDQs to take fisheries early, perhaps under that

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1 regulation that's in existence, and we'll be discussing later  
2 and on the other hand we say but if you do, now those CDQ  
3 vessels who participated in that fishery are not in the open  
4 access fishery, that's what you're telling us?

5 CHAIRMAN WHITE: Mr. Morrison.

6 MR. MORRISON: Mr. Chairman, Mr. Coffey, if  
7 they -- if you pass this and they participate -- if they were  
8 in that Bristol Bay red king crab area in that 30-day period  
9 operating trawl gear, pot gear, then they would not be allowed  
10 to participate. As I indicated though, at this point in time,  
11 we don't envision having a pre-open access -- pre-CDQ -- pre-  
12 open access CDQ fishery in Bristol Bay, because of the size of  
13 the GHL.

14 MR. COFFEY: What about in any of the other  
15 areas covered here, Q for example?

16 MR. MORRISON: Mr. Chairman, in Area Q, it  
17 would also impact them and -- and that would be one for the  
18 opillio fishery where -- where they might be impacted.

19 MR. COFFEY: If we wanted to make an exception  
20 for vessels that participated in the CDQ fishery, would we do  
21 it here or would we do in the provisions dealing with CDQ?

22 UNIDENTIFIED SPEAKER: Mr. Nelson, perhaps,  
23 can answer that.

24 CHAIRMAN WHITE: Mr. Nelson from the  
25 Department of Law.

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1 MR. NELSON: Mr. Chairman, Mr. Coffey, I --  
2 it's -- this is just a gut reaction, but I think maybe it  
3 would be better with the -- to make an exception in the CDQ  
4 situation -- you're going to have a situation where you don't  
5 -- you don't want to exclude -- just because they sometimes  
6 participate in the CDQ, you don't want to be able to take --  
7 have them take advantage of this and not participate. So now,  
8 but when they're participating in the CDQ fishery, you -- you  
9 probably will want to -- to exclude that subsequent  
10 prohibition for participating in that season. It probably  
11 doesn't matter, but -- I don't know.

12 UNIDENTIFIED SPEAKER: Boy, there's clarity.

13 MR. NELSON: I just talked myself out of it.

14 MR. COFFEY: So I take it we can do it here,  
15 we can do it there, or we can do it nowhere or everywhere, oh,  
16 sorry, it's late. Mr. Chairman, I'm -- for discussion  
17 purposes, I'm going to make this motion, I move that we add  
18 the language, except for those vessels that are participating  
19 in -- as a CDQ vessel.

20 UNIDENTIFIED SPEAKER: Second.

21 UNIDENTIFIED SPEAKER: We go on with it, so  
22 there you have it.

23 CHAIRMAN WHITE: Mr. Morrison, comments.

24 MR. MORRISON: Mr. Chairman, I guess I'd have  
25 the question, would -- would they then be held to the 14-day

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1 period which -- which is in current regulation now?

2 UNIDENTIFIED SPEAKER: I don't know. What  
3 should -- here's the point. We have adopted a regulation for  
4 CDQ fisheries that says, oh, you can go -- on occasion, go  
5 early and you guys have, in one instance, at least established  
6 that that could happen and they could get up to 50 percent and  
7 we're going to look at that in the next day or so, right?  
8 That's coming. Now the question is, if we permit them to do  
9 it on the one hand, should we then say, you can't participate  
10 in the open access fishery, and I understand that a lot of CDQ  
11 -- that a lot of these people who have CDQs are contracting  
12 with people who would otherwise be open access fishermen,  
13 right? So, in essence, if we say to take some portion of five  
14 percent, who know -- I mean I don't know what that would have  
15 ultimately amount to, you cannot then participate at all in  
16 the 95 percent or the 92.5 percent fishery -- are we just all  
17 of a sudden telling the CDQs that they're not going to be able  
18 to find anybody to -- to participate in their fishery. That's  
19 the reason I made the motion so we could find that out.  
20 Because if you're just making it impossible for the CDQ folks  
21 to get vessels with whom to contract so they can fish, we've  
22 just gutted the CDQ, or we're going to make them all go buy  
23 their own boats that only be used in the CDQ fishery. And  
24 that may be what we want to do, but I'd like to do it  
25 knowingly, rather than unknowingly.

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1 CHAIRMAN WHITE: Mr. Morrison.

2 MR. MORRISON: Mr. Chairman, in the past, we  
3 have tried hard not to advantage those vessels that happen to  
4 be operating in a CDQ fishery. In other words, we haven't  
5 given them any additional privileges that the open access  
6 vessels have had, and this seems like this might be a real --  
7 might put a vessel that's going to participate in a CDQ  
8 fishery at a considerable advantage. And so I -- and I don't  
9 believe that -- that this -- this particular portion came up  
10 in committee and I suspect that -- that the open access  
11 industry would probably not be very happy about that.

12 CHAIRMAN WHITE: Mr. Dersham.

13 MR. DERSHAM: Thank you, Mr. Chairman. Well,  
14 when we got the opinion from the Department of Law that we  
15 could probably do it either way, my first thought was that  
16 it'd be better to deal with it when we deal with the -- the  
17 CDQ question, and this discussion has made me feel even more  
18 strongly about that, so I -- I -- I recommend that we vote no  
19 on this amendment, or this [indisc.], Mr. Chairman.

20 CHAIRMAN WHITE: Chair concurs with Mr.  
21 Dersham and the Chair also points out the conservation of mass  
22 and energy and I'm getting fatter and I'm getting -- I got a  
23 lot less energy.

24 UNIDENTIFIED SPEAKER: [Indisc.].

25 CHAIRMAN WHITE: This is when we make a choice

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1 between doing something now at the end of the day or getting  
2 some rest under us and considering it later, and I think I'll  
3 be voting as Mr. Dersham unless I hear otherwise. Mr. Coffey.

4 MR. COFFEY: Yeah, I'm going to vote the same  
5 way. I wanted to have a brief discussion -- I would ask one  
6 last thing of staff to consider if you're going -- if we're  
7 going to do that, perhaps to require the CDQ vessels to report  
8 catch and location of catch, Mr. Chairman.

9 CHAIRMAN WHITE: An information request for  
10 Mr. Coffey within the discussion of the amendment that is  
11 before us.

12 MR. COFFEY: Mr. Chairman, at your request, I  
13 withdraw my amendment if the second will agree.

14 UNIDENTIFIED SPEAKER: I will agree, Mr.  
15 Chair.

16 MR. COFFEY: All right.

17 CHAIRMAN WHITE: Okay, we're back on final  
18 action and I was -- I was over there with you Mr. Morrison  
19 before you threw this slider by me. Now, anything in  
20 addition, Mr. Morrison?

21 MR. MORRISON: No, Mr. Chairman.

22 CHAIRMAN WHITE: Thank you. Anything in  
23 addition from the Department of Law?

24 MR. NELSON: No, Mr. Chairman.

25 CHAIRMAN WHITE: Madam Executive Director, Mr.

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1 Umphenour's question is heard.  
2 MS. COTE: Final action on Proposal 291.  
3 White?  
4 CHAIRMAN WHITE: Yes.  
5 MS. COTE: Umphenour?  
6 MR. UMPHENOUR: Yes.  
7 MS. COTE: Engel?  
8 MR. ENGEL: Yes.  
9 MS. COTE: Dersham?  
10 MR. DERSHAM: Yes.  
11 MS. COTE: Nelson?  
12 MR. NELSON: Yes.  
13 MS. COTE: Coffey.  
14 MR. COFFEY: Yes.  
15 MS. COTE: Motion carries, six-zero-one, Mr.  
16 Chair.

17

18 [End of Requested Portion]

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Substitute Language for RECONSIDERATION OF Proposal # 355 - FINAL VERSION  
5 AAC 35.053 (1) OPERATION OF OTHER [POT] GEAR

(1) except as provided in (a) and (b) of this section, a person or vessel that operates commercial, subsistence, sport, or personal use pots, during the 14 days immediately before the opening of the commercial Tanner crab season in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J where the fishing with pots occurred, may not participate in the commercial Tanner crab fishery in the Tanner crab registration area, or with respect to Registration Area J, in that district, where fishing with pots occurred; a person or vessel that participates in a commercial Tanner crab fishery in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J, may not operate commercial, subsistence, sport or personal use pots in that registration area, or with respect to Registration Area J, in that district where fishing with pots occurred during the 14 days after the close of the commercial Tanner crab season; a vessel or person may operate other commercial pots in a Tanner crab registration area after putting crab pots in storage, as specified in 5 AAC 35.052, and unless the registration is already invalidated in 5 AAC 35.020(k), after invalidating the vessel's registration by contacting, in person, a local representative of the department:

(a) a person or vessel that operates commercial, subsistence, sport or personal use pots, or trawl gear in the Bering Sea District of Registration Area J, during the 30 days immediately before the opening of the commercial *C bairdi* Tanner crab season in that district, may not participate in the commercial *C bairdi* Tanner crab fishery in that district.

(b) a person or vessel that operates commercial, subsistence, sport or personal use pots, or trawl gear in the Bering Sea District of Registration Area J, during the 14 days immediately before the opening of the commercial *C. opilio* Tanner crab season in that district, may not participate in the commercial *C. opilio* Tanner crab fishery in that district.

(2) during a commercial Tanner crab fishery, a person or vessel may stop participating in the Tanner crab fishery and instead operate commercial pots other than Tanner crab pots, if the Tanner crab pots are put in storage as specified under 5 AAC 35.052, and the vessel owner or the owners agent contacts a department representative, in person and requests that the Tanner crab registration be invalidated.



**Substitute Language for Proposal # 355** (from Committee D)

5 AAC 35.053 (1) OPERATION OF OTHER [POT] GEAR

(1) except as provided in (a) of this section, a person or vessel that operates commercial, subsistence, sport, or personal use pots, during the 14 days immediately before the opening of the commercial Tanner crab season in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J where the fishing with pots occurred, may not participate in the commercial Tanner crab fishery in the Tanner crab registration area, or with respect to Registration Area J, in that district, where fishing with pots occurred; a person or vessel that participates in a commercial Tanner crab fishery in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J, may not operate commercial, subsistence, spot or personal use pots in that registration area, or with respect to Registration Area J, in that district where fishing with pot occurred during the 14 days after the close of the commercial Tanner crab season; a vessel or person may operate other commercial pots in a Tanner crab registration area after putting crab pots in storage, as specified in 5 AAC 35.052, and unless the registration is already invalidated in 5 AAC 35.020(k), after invalidating the vessel's registration by contacting, in person, a local representative of the department:

(a) a person or vessel that operates commercial, subsistence, sport or person use pots, or trawl gear in the Bering Sea District of Registration Area J, during the 30 days immediately before the opening of the commercial *C. bairdi* or *C. opilio* Tanner crab seasons in that district, may not participate in the commercial *C. bairdi* or *C. opilio* Tanner crab fisheries in that district.

(2) during a commercial Tanner crab fishery, a person or vessel may stop participating in the Tanner crab fishery and instead operate commercial pot other than Tanner crab pots, if the Tanner crab pots are put in storage as specified under 5 AAC 35.052, and the vessel owner or the owners agent contacts a department representative, in person and requests that the Tanner crab registration be invalidated.

**PROPOSAL 355** - 5 AAC 34.053. OPERATION OF OTHER POT GEAR., and 5 AAC 35.053. OPERATION OF OTHER POT GEAR. Amend these sections to provide the following:

A person or vessel that operates commercial, subsistence, personal use or sport fishing gears [POTS] in the 30 days immediately before the opening, or prior to registering for a commercial king or tanner crab fishery in a crab registration area, may not participate in a commercial crab fishery in the crab registration area (where groundfish gear of any kind has been used).

**PROBLEM:** Fair start policy, king and tanner crab fisheries in the Bering Sea crab registration areas.

**WHAT WILL HAPPEN IF NOTHING IS DONE?** Groundfish vessels using other than pot gear can operate in a crab registration area up to the time of tank inspection, while vessels using pot gear cannot fish within 14 days of seasoning openings.

**WHO IS LIKELY TO BENEFIT?** The fleet in general will benefit from the improvement in the fair start policy.

**WHO IS LIKELY TO SUFFER?** No one we are aware of at this time.

**OTHER SOLUTIONS CONSIDERED?** The current regulation prohibiting the use of pot gear within 14 days of a crab season was inherited to deter "prospecting" and to promote a fair start. Other groundfish gears should be included in the regulation.

**PROPOSED BY:** Arni Thomson

(HQ-98-F-131)

\*\*\*\*\*

**FAVOR**

**OPPOSE**

-----  
**FINAL ACTION:** Carries    Fails    Tabled    No Action    See Prop. # \_\_\_\_\_

**ABSENT** \_\_\_\_\_ **ABSTAIN** \_\_\_\_\_

**DATE** \_\_\_\_\_ **TIME** \_\_\_\_\_ **TAPE #** \_\_\_\_\_



1 CHAIRMAN WHITE: Cite it [indisc.].

2 MR. COFFEY: Well, you're sitting on it.  
3 Motion to reconsider, Mr. Chairman is under Board of Fisheries  
4 Findings 80-78. I'm referring to paragraph three, which is  
5 presentation of new evidence that was not before the Board at  
6 the time the original vote was taken. The new evidence, I --  
7 I -- I read that rather broadly. I don't think it necessarily  
8 means some factual evidence, although we have facts here in  
9 front of us that were not available. I think it means new --  
10 material new -- things like, oh, we found out that the  
11 national standards maybe create a problem. I think that the  
12 ACR as presented with the compromise worked out by some  
13 members of the industry and some members of the CDQ group,  
14 that's new evidence, that sort of stuff creates a situation  
15 where we acknowledge and recognize that we've got a problem  
16 here if we continue down the path we're going and -- and that  
17 allows us to reconsider. That's how I view new evidence, Mr.  
18 Chairman.

19 CHAIRMAN WHITE: Is there any question on the  
20 finding in our rules of procedure, Board Members? Hearing  
21 none, Mr. Coffey, proceed with your instruction of  
22 reconsideration.

23 MR. COFFEY: Well, Mr. Chairman -- Mr.  
24 Chairman, the -- I -- if we reconsider, I will bring -- if we  
25 agree to reconsider 355, I will have it brought before us with  
26 the amendment that will resolve the conflicts which have been

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1 discussed, so I think I've made an ample showing of new  
2 evidence. I intend to support the motion to reconsider, and  
3 then we'll get to the merits of 355 once we've done that if we  
4 do that.

5 CHAIRMAN WHITE: Mr. Engel.

6 MR. ENGEL: Thank you, Mr. Chairman, I too  
7 think we've made a finding of new evidence and certainly new  
8 evidence is in the eyes of the beholder. It was buried there  
9 somewhere, but we didn't -- come to our attention, we didn't  
10 see it and that's the human frailties of making regulations  
11 like this. It has come to our attention and thank goodness we  
12 did have an hour or so to reflect on this, and that's one of  
13 the benefits of taking time to look at the total picture. And  
14 I follow Mr. Coffey's line of thinking and find that we do  
15 have new evidence and will be supporting the motion to  
16 reconsider Proposal 355 for those reasons, Mr. Chairman.

17 CHAIRMAN WHITE: Mr. Umphenour.

18 MR. UMPHENOUR: I concur with what my two  
19 fellow Board Members just said when we passed that proposal  
20 yesterday. I was unaware of what the ramifications would be,  
21 Mr. Chair.

22 CHAIRMAN WHITE: Anything else, Mr. Umphenour?

23 MR. UMPHENOUR: Question.

24 CHAIRMAN WHITE: Mr. Umphenour's question is  
25 heard Mr. Marcotte.

26 MR. MARCOTTE: Mr. Chair, on the motion to

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1 reconsider 355. Dersham?  
2 MR. DERSHAM: Yes.  
3 MR. MARCOTTE: Nelson?  
4 MR. NELSON: Yes.  
5 MR. MARCOTTE: Coffey?  
6 MR. COFFEY: Yes.  
7 MR. MARCOTTE: Miller -- or I'm sorry, White?  
8 CHAIRMAN WHITE: Yes.  
9 MR. MARCOTTE: Umphenour?  
10 MR. UMPHENOUR: Yes.  
11 MR. MARCOTTE: Engel?  
12 MR. ENGEL: Yes.  
13 MR. MARCOTTE: Mr. Chairman, the motion  
14 carries.  
15 UNIDENTIFIED SPEAKER: Mr. Chairman, we'll  
16 have substitute language for Proposal 355 directly. In  
17 anticipation of this, I ask that it be copied and it's real  
18 simple, so Mr. -- but Mr. Morrison has it if he could perhaps  
19 provide the information to us, Mr. Chairman.  
20 CHAIRMAN WHITE: Mr. Morrison, please.  
21 MR. MORRISON: Thank you, Mr. Chairman, the  
22 original Proposal 355 had an exception exclusion for the  
23 Bering Sea district of registration Area J which provided that  
24 vessels that participated in that area for the 30 days prior  
25 could not participate in either the c. bairdi or C. opilio  
26 fishery and this reconsideration language just simply pulls

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1 out the opilio. There would still be a 30-day exception for  
2 vessels which wanted to participate in the Bering Sea C.  
3 bairdi fishery.

4 CHAIRMAN WHITE: Mr. Coffey.

5 MR. COFFEY: I'm sorry, Mr. Chairman, it's  
6 [indisc.]. Mr. Chairman, if Board Members will look at  
7 Committee D's report which is RC 135 and look at page 23 of RC  
8 135 and I'll -- I'll ask Mr. Morrison to -- to backstop me on  
9 this, if you look at page 23 of RC 135, in subparagraph A,  
10 two-thirds of the way down, what the amendment that is --  
11 would -- would -- what we're going to do here is substitute  
12 the language for this -- of this page with the words or C.  
13 opilio stricken from subparagraph A. Is that correct, Mr.  
14 Morrison?

15 CHAIRMAN WHITE: Mr. Morrison, Mr. Coffey.

16 MR. MORRISON: Mr. Chairman, yeah, you'd have  
17 to strike it in two places.

18 MR. COFFEY: Right. Mr. Chairman, at this  
19 time, I move to amend Proposal 355 to -- by striking the --  
20 the words in subparagraph A of page 23 of RC 135 to strike in  
21 two place the words C. opilio. That's in the fourth line and  
22 in the sixth line from that provision. Mr. Chairman.

23 UNIDENTIFIED SPEAKER: Second.

24 MR. COFFEY: Mr. Chairman, the purpose of  
25 this, if we do this, we will then provide for a 14-day period  
26 of time in this fishery, the C. opilio fishery whereby someone

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1 who goes into that fishery in the 14 days immediately before  
2 its opening with pot gear, trawl gear or the other gear -- or  
3 in a fishery as identified in section 1, they would then be  
4 precluded from participating in this fishery if they were in  
5 there in the 14 days as opposed to the 30 days. The 30 days  
6 would continue to exist for the other provisions in the C.  
7 bairdi tanner crab and so forth. So, we would, in effect, and  
8 to the opilio season with its high GHs recognize that the  
9 importance of a fair start, while still has some importance,  
10 is not nearly as compelling a reason as it is in those  
11 fisheries with low guideline harvests, as Mr. Engel says. We  
12 also, I think, recognize then under the national standards  
13 that we are not discriminating as between residents of  
14 different states. There is, I think, a preponderance of  
15 ownership, and this is a preponderance, not entirely of -- of  
16 ownership of trawl vessels by those outside of Alaska, and  
17 we're talking about allowing CDQ groups into this which are,  
18 by definition, Alaskan communities and therefore Alaskan  
19 residents, although some of the CDQ vessels that do the  
20 fishing may be owned by out-of-state residents, so I just  
21 wanted to know that this creates a little better balance and -  
22 - and if there was discrimination between residents, this  
23 reduces it and minimizes it and, frankly, the discrimination  
24 is not an intended consequence. It's something that may arise  
25 by the nature of the ownership of the vessels and it's not --  
26 certainly not this intent of this Board Member or -- nor do I

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1 believe any member of the Board to discriminate. It's  
2 something that -- that may have arisen out of the way we were  
3 doing it before and if it did, then this reduces that danger  
4 even more. Also, Mr. Chairman, this amendment, and if we  
5 follow it up with the CDQ provisions that we've been talking  
6 about, this reflects the importance of the fisheries resources  
7 to the fishing communities so that they're -- we can provide  
8 for the sustained participation of these communities and  
9 minimize adverse economic effects on the communities. That's  
10 the whole thrust behind this CDQ deal and that's what we're  
11 trying to do here. So, Mr. Chairman, I view this as a two-  
12 step process. I view that reducing the pre-entry time into  
13 the opilio fishery from 14 to 30 days will then allow us to do  
14 the -- the necessary work in -- in the CDQ fishery. Mr.  
15 Chairman, I also note that RC 195 is now before us, that is  
16 the RC that contains -- that no longer contains the language  
17 which was stricken. This would be what we would be adopting,  
18 the 195, it has the word C. opilio stricken twice from  
19 subparagraph A. Mr. Chairman, that's all I have on that.

20 CHAIRMAN WHITE: Discussion on the amendment,  
21 Mr. Engel.

22 MR. ENGEL: Yes, just a clarification for Mr.  
23 Coffey. When you were talking about our responsibility for  
24 the communities, you were talking about the national  
25 Standards, number 8, were you not, the one that talks about  
26 provide for sustained participation for such communities and,

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1 to an extent practical, minimize adverse economic impacts on  
2 such communities; is that correct?

3 MR. COFFEY: Yes sir, that's the national  
4 standard 8, A and B, yes, sir.

5 MR. ENGEL: Thank you, I concur with your  
6 assessment of that. Mr. Chairman, thank you.

7 CHAIRMAN WHITE: Other discussion, Board  
8 Members.

9 MR. COFFEY: Mr. Chairman.

10 CHAIRMAN WHITE: Mr. Coffey.

11 MR. COFFEY: I also note that what we were  
12 faced with before, assuming we would have adopted the amended  
13 ACR 27, is we would have been treating CDQ fishers different  
14 from pot and trawl fishers because one would have been faced  
15 with a 30 day, and another would have been faced with a 14  
16 day. By making it 14 days across the board, assuming again we  
17 pass the CDQ proposal, but, then we would be treating -- we  
18 would be meeting standard number 4, which requires, and that's  
19 national standard number 4, which requires conservation and  
20 management measures to be fair and equitable between all  
21 fishermen. That means every fisherman who fished in the 14-  
22 day period prior to the open access fishery would be excluded  
23 from the fishery. If you did it 15 days or 16 days or 18  
24 days, all of them, they could come into that open access  
25 fishery. So, we're being fair to all of the fishermen, and so  
26 I think we've met that national standard as well, Mr.

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1 | Chairman.

2 |                   CHAIRMAN WHITE: Other discussion, Mr.  
3 | Umphenour, please, to the amendment.

4 |                   MR. UMPHENOUR: Thank you, Mr. Chair. This  
5 | fishery lasts a long time, this opilio fishery, two to -- two-  
6 | and-a-half months and in this fishery, the concern for  
7 | conservation reasons over a fair start is not near as much of  
8 | a concern to me as an individual board member as it is for  
9 | these fisheries that are very short fisheries that may only  
10 | last four to six or eight days and so the -- the concern there  
11 | is much greater and so I feel that -- that this is a much  
12 | better way to address the free start issue, Mr. Chair. And  
13 | that's -- and one of the other things is that it does is, in  
14 | this free start issue, in my mind, besides just a free start,  
15 | it -- what it does is it makes it so that the fishery, and one  
16 | of the reasons for this is so that the fishery will be more  
17 | manageable for the department staff and I -- I think that it  
18 | speaks to that as well, Mr. Chair.

19 |                   CHAIRMAN WHITE: Other discussion, Board  
20 | Members? Mr. Engel.

21 |                   MR. ENGEL: Thank you, Mr. Chairman. I -- for  
22 | clarity, Mr. Umphenour, you meant fair start; is that correct?

23 |                   MR. UMPHENOUR: That's what I meant, ...

24 |                   MR. ENGEL: Okay.

25 |                   MR. UMPHENOUR: ... a fair start and also it  
26 | addresses the conservation problem the department has with

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1 | these very short fishing times. You know, I'm comparing the  
2 | two different fish -- types of fisheries and so I feel that 14  
3 | days is appropriate in this instance, whereas in the other  
4 | fisheries, I feel the 30 days is important, Mr. Chair.

5 | CHAIRMAN WHITE: Other discussion, Board  
6 | Members. Is there any more information from staff? Mr.  
7 | Morrison.

8 | MR. MORRISON: Yes, Mr. Chairman, an  
9 | oversight. It appears that if we pull opilio out of  
10 | subsection A, that there may be no exclusion period for trawl  
11 | gear under 1 above. The way that -- that 1 above reads is it  
12 | says for the 14 days for pots, so the Board ...

13 | UNIDENTIFIED SPEAKER: No, no, with trawl  
14 | gear.

15 | CHAIRMAN WHITE: Mr. Coffey.

16 | MR. COFFEY: I'm sorry. A says a person or  
17 | vessel that operates commercial, subsistence, sport or  
18 | personal -- it's person use, it's supposed to be personal use,  
19 | pots or trawl gear during the 30 days, so how is trawl gear  
20 | not in it?

21 | UNIDENTIFIED SPEAKER: [Indisc.].

22 | MR. COFFEY: 195.

23 | UNIDENTIFIED SPEAKER: [Indisc.].

24 | MR. COFFEY: Oh. Oh, it is in -- but, I see,  
25 | Mr. Chairman, I might -- Mr. Engel just pointed out -- I'm --  
26 | I've been reading from page 23, which -- which is really

1 what's in front of us because that's where the amendment lies.  
2 Now I'm told that in 195 -- well, the language is still in  
3 there. I'm sorry, I don't understand the problem, Mr.  
4 Chairman.

5 MR. MORRISON: Mr. Chairman, by excluding  
6 opilio from subsection A, you revert back to 1 above and in 1  
7 above, I believe trawls are not mentioned.

8 MR. COFFEY: All right, so we need another  
9 amendment. I see what you're saying. Mr. Chairman.

10 CHAIRMAN WHITE: Is that an over -- is that  
11 just an omission that can be dealt with or is this a  
12 substantive question that wasn't incorporated into the -- or  
13 the -- this language that's before us? Is this a drafting  
14 error?

15 MR. MORRISON: Mr. Chairman, it was my  
16 understanding that -- that if we pulled opilio out that --  
17 that it would still be illegal for a trawl vessel or vessel  
18 fishing pots to participate in the 14 days.

19 MR. COFFEY: And Mr. Chairman, that was our  
20 understanding. All we were trying to do was change from 30  
21 days to 14 days. We weren't trying to bring any more gear in  
22 or keep any more gear out. Nothing was changing from our  
23 intent, except 30 days to 14 days. Mr. Morrison has a  
24 question, Mr. Chairman.

25 CHAIRMAN WHITE: Mr. Morrison.

26 MR. MORRISON: My question to the Board, Mr.

1 Chairman would be, however, if we rewrote this in, we would  
2 want to only prevent vessels that fished with trawls to not be  
3 able to participate in a Bering Sea district fishery and not  
4 in any tanner crab fishery, because this -- this would address  
5 all tanner crab registration areas, so we would have to put  
6 that in with respect to Area -- registration Area J.

7 MR. COFFEY: Well, Mr. Chairman, may I --  
8 look, this is -- now it's getting to be ditch material. Mr.  
9 Chairman, I suggest we stand down for as long as it takes to  
10 draft the appropriate language so that we do it right and  
11 we're not revisiting this thing again Saturday morning, or, God  
12 forbid, Sunday afternoon, Mr. Chairman.

13 CHAIRMAN WHITE: We'll stand down until we get  
14 it fixed.

15 MR. MORRISON: Mr. Chairman, we should be able  
16 to make this correction, provided that we can agree on what  
17 that correction should be, within about 15 minutes, I would  
18 think.

19 CHAIRMAN WHITE: That means a half an hour, if  
20 you're anything like us. Do we just want to stand down for  
21 lunch then everybody comes back at 1:00 and we have the  
22 language in front of us and it's copied?

23 MR. MORRISON: Yes.

24 CHAIRMAN WHITE: Mr. Hughes, Ms. Woods, will  
25 you stick with them so that when we come back for lunch, this  
26 language is in front of us?

1 MR. HUGHES: Absolutely, Dr. White.

2 CHAIRMAN WHITE: Thank you, we'll stand down  
3 till 1:00 p.m.

4 [Off Record]

5 [On Record]

6 CHAIRMAN WHITE: [Tape begins mid-speech] ...  
7 pound fishery. We have -- we have reconsidered Proposal 355;  
8 we have an amendment on the floor. Mr. Coffey to the record.

9 MR. COFFEY: Mr. Chairman, in light of the  
10 discussion that led to our lengthy break and lunch, relative  
11 to the trawl fisheries and the absence of the trawl fisheries  
12 if we deleted the opilio fishery, we asked staff to re-do it.  
13 So what I'm going to do, and if I -- if I'm off base, you let  
14 me know, I was going to move to substitute the language in RC  
15 198, or whatever it is we have on the table relative to 355.  
16 This will then become Proposal 355, in whatever state it's in,  
17 Mr. Chairman.

18 UNIDENTIFIED SPEAKER: Second.

19 CHAIRMAN WHITE: Never mind, Mr. Engel. Is  
20 there any objection to substituting the language in 198 for  
21 the language that was contained in 1 ...

22 UNIDENTIFIED SPEAKER: 95.

23 CHAIRMAN WHITE: ... -- 195 that was before us  
24 as substitute language for 355? Seeing and hearing no ...

25 UNIDENTIFIED SPEAKER: Yes.

26 CHAIRMAN WHITE: ... objection, that language

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1 is now before us, Mr. Coffey.

2 MR. COFFEY: Mr. Chairman, let's just have  
3 clarity to the record, what was before us was page 23 of RC --  
4 let me make sure I get that number, 135, page 23 of 135, we  
5 never actually moved in 195. When we got 195 in front of us,  
6 we found the mistake, so what was before us was 23 -- page 23.  
7 of -- of RC 135. Mr. Chairman, my understanding.

8 CHAIRMAN WHITE: Is there a motion to  
9 substitute 195 before -- you're saying no, there wasn't?

10 MR. COFFEY: Mr. Chairman, my understanding  
11 was there was not, or if there was, it never got voted on  
12 because when we had it, staff put up its hand and said this  
13 may cause a problem relative to the trawl fishery. I -- I  
14 don't know that it ultimately matters, Mr. Chairman; it was  
15 just a point for absolute clarity.

16 CHAIRMAN WHITE: Bingo. You're right, let the  
17 record so show the Chair was wrong. MR. COFFEY: One  
18 time today, Mr. Chairman, once and only once.

19 CHAIRMAN WHITE: Only once a day. Mr. Coffey,  
20 the language contained in 198 is substituted for us as 355,  
21 go.

22 MR. COFFEY: Mr. Chairman, may I have  
23 permission to ask staff a question?

24 MR. HUGHES: Mother may I?

25 MR. COFFEY: Mother may I? Mother [indisc.].

26 CHAIRMAN WHITE: Strike 2, Mr. Hughes, do not



1 turn the chicken on again, having enough trouble getting us  
2 out of high school here without you pulling us down to grade  
3 school. Now, Mr. Coffey.

4 MR. COFFEY: I'd like to ask staff some  
5 questions.

6 CHAIRMAN WHITE: Please proceed.

7 MR. COFFEY: Thank you, Mr. Chairman. Here's  
8 my question, as I understand it very clearly, all of our --  
9 all our intent in doing this reconsideration is to ensure that  
10 it's a 14-day prohibition. If you fish in the 14 days, by any  
11 gear that's listed, pots or trawl gear, in -- then you -- you  
12 are not permitted to participate in the C. opilio fishery, and  
13 -- and 355 is passed, made it 30 days. Does this change cover  
14 all of the aspects and change it from 40 -- excuse me, 30 to  
15 14?

16 CHAIRMAN WHITE: Mr. Morrison for Mr. Coffey,  
17 please.

18 MR. MORRISON: Mr. Chairman, I believe it  
19 does. We conferred with Mr. Nelson and he helped us figure  
20 out how this should be written and I believe that -- that it  
21 does do that.

22 MR. COFFEY: Okay. I would say only this  
23 then, Mr. Chairman, to the extent it doesn't or there's some  
24 glitch, our intent, I believe is clear, is that correct, does  
25 staff understand what we're trying to do in law?

26 CHAIRMAN WHITE: Mr. Nelson from law?

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1 MR. NELSON: Mr. Chairman, yes, I concur with  
2 Mr. Morrison's statements, and I understand your intent.

3 CHAIRMAN WHITE: Mr. Coffey.

4 MR. COFFEY: That's all I had, Mr. Chairman,  
5 aside from to the extent necessary incorporating all my  
6 previous remarks as to the -- as to the -- the substantive  
7 reasons for making this change, Mr. Chairman.

8 CHAIRMAN WHITE: Mr. Engel in addition, sir?

9 MR. ENGEL: Mr. Chairman, I'd just like to,  
10 also for the record make it very, very clear that -- that it's  
11 also my intent, should there be some glitch in this thing that  
12 -- that we make this adjustment from the 30 day to the 14 day  
13 for this opilio fishery, Mr. Chairman. I think we have the  
14 language before us. I'd incorporate my previous comments  
15 relative to this issue, and Mr. Chairman, I'm prepared to vote  
16 on this. I don't see any cost to the private person  
17 associated with this issue that we have before us, Mr.  
18 Chairman.

19 CHAIRMAN WHITE: Other Board Members? Errors  
20 and omissions, Mr. Donaldson?

21 MR. DONALDSON: No, Mr. Chairman.

22 CHAIRMAN WHITE: Mr. Krygier, anything in  
23 addition, sir?

24 MR. KRYGIER: No ... [Tape ends mid-speech]

25 Tape 26B

26 MR. MARCOTTE: [Tape begins mid-speech] ...

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1 Mr. Chair on 355 as amended. White?  
2 CHAIRMAN WHITE: Yes.  
3 MR. MARCOTTE: Umphenour?  
4 MR. UMPHENOUR: Yes.  
5 MR. MARCOTTE: Engel?  
6 MR. ENGEL: Yes.  
7 MR. MARCOTTE: Dersham?  
8 MR. DERSHAM: Yes.  
9 MR. MARCOTTE: Nelson?  
10 MR. NELSON: Yes.  
11 MR. MARCOTTE: Coffey?  
12 MR. COFFEY: Yes.  
13 MR. MARCOTTE: Mr. Chairman, the motion  
14 carries six-zero.  
15 MR. COFFEY: Mr. Chairman.  
16 CHAIRMAN WHITE: Six-zero-one, Mr. Marcotte.  
17 [End of reconsideration of proposal 355]

PROPOSAL 355

March 25, 1999, Thursday Tape 25A at 300

CHAIRMAN WHITE: 355, Mr. Dersham.

MR. DERSHAM: Yes, sir.

CHAIRMAN WHITE: 355 to the record, sir, Mr. Donaldson.

MR. DONALDSON: 5 AAC 34.053, operation of other pot gear and 5 -- and 5 AAC 35.053, operation of other pot gear.

UNIDENTIFIED SPEAKER: Move to adopt.

CHAIRMAN WHITE: From committee, Mr. Dersham.

MR. DERSHAM: Mr. Chairman, this -- this proposal was intended to prohibit any -- as originally written was prohibited to intend -- include prohibiting any fishing gear from fishing 30 days before any king or tanner crab fishery. We discussed this issue yesterday under Proposal 291 and dealt with the king crab portion of it in the substitute language for 291, which included pot and trawl gear and a 30-day prohibition of fishing before the king crab fishery. This substitute language which we have here, and I will bring forward after department comments now is only to address the tanner crab portion of this issue, Mr. Chairman, and has the same solution as we came to under 291 for king crab, but now only addresses tanner crab. Mr. Chairman, I'll turn to the department.

CHAIRMAN WHITE: Mr. Morrison and then Mr. Coffey from committee. Mr. Morrison, please.

MR. MORRISON: Yes, Mr. Chairman, this is a public proposal, and we were asked by industry to examine the

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1 bycatch rates and performance of fish -- pollack trawl vessels  
2 that participated in fisheries before the Bristol Bay red crab  
3 fishery. We conducted that analysis -- Mr. Bowers conducted  
4 that analysis, and I think we were unable to demonstrate a  
5 clear relationship between vessels that trawl in the area  
6 before the fishery and those vessels that do appreciably  
7 better than the average. And so the -- the substitute  
8 language was developed out of committee and at the wishes of  
9 the committee, we developed the substitute language and went  
10 ahead and included the trawl gear in that 30-day exclusion  
11 period.

12 CHAIRMAN WHITE: Mr. Coffey from committee.

13 MR. COFFEY: Yeah, Mr. Chairman, it was  
14 pointed out in committee that -- that the data indicated that  
15 those who were trawlers then subsequently came along and  
16 fished crab, from going from the trawl, they did average, or  
17 thereabouts and the comment was you've got a trawl vessel,  
18 which is not a crab vessel, and you've got trawl gear hanging  
19 around on it, so that impedes your efficiency, and secondly,  
20 these folks are trawl fishermen, not crab fishermen, so the  
21 proof that they were getting an unfair advantage, was in the  
22 fact that they did the average, because otherwise, had they  
23 not a fair -- unfair advantage, you would have expected those  
24 who were neither crab fishermen nor impeded with trawl gear --  
25 and impeded with trawl gear to do much worse than the average.  
26 Certain logic to that argument, Mr. Chairman. - Mr. Chairman,  
27 I do note that Mr. Paine, who was -- excuse me, pardon me for  
28 using the name, a report was made from trawlers and it's found  
29 at RC 132 and his comments are on page -- excuse me, page 1  
30 and 2. His position is basically that there's united catcher  
31 boats have historically depended on a number of crab and  
32 groundfish fisheries. He says this action, as per

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1 contemplated by this would force united catcher boat vessels  
2 to forego 30 days of groundfish fishing prior to the opening  
3 of a crab fishery. Do we -- he asks if we have any  
4 information which provides this Board with the costs of the 39  
5 vessels having to forego fishing for 30 days prior to a crab  
6 opener if they choose to fish crab. He talks about the fact  
7 that the pollack fishery in the Bering Sea lasts 90 days, if  
8 we choose to fish both opilio and Bristol Bay red king crab,  
9 we would have to forego 60 days of groundfish fishing,  
10 primarily pollack A, B and C seasons. Effective this, would  
11 be -- we would either fish rock -- pollack fishery or the crab  
12 fishery, no longer being able to fish both. And he worries  
13 about 39 vessels being bankrupt, claims that 39 vessels is  
14 over 30 percent of the Bering Sea catcher vessel pollack  
15 fleet. He claims this is highly allocative and would  
16 reallocate the amount of the crab harvested by the vessels  
17 that fish groundfish to the vessels that don't fish for  
18 groundfish. Says that there would be -- there were 28 united  
19 catcher boat members that participated in the Bristol Bay red  
20 king crab fishery in 1998 and that their average catch was  
21 100,000 pounds for a total of 2,800,000 pounds or roughly  
22 3,000,000 reallocated with just -- from just these vessels.  
23 He further goes onto claim that prospecting with trawl gear  
24 does not happen, he says it doesn't happen because the crab, I  
25 guess the PSC, which I'm not sure what that means, is a  
26 precious thing that constrains the directed groundfish  
27 fishery. It is not squandered to prospect for good crab  
28 grounds. Finally, he tells us that we lack legal jurisdiction  
29 to regulate a federal groundfish fishery. This proposal  
30 effectively creates a federal fair start regulation that  
31 effects the Bering Sea groundfish fisheries, a fishery that is  
32 managed by the federal government. We believe that the

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1 federal crab FMP does not provide the authority [indisc.]  
2 Board of Fisheries to create fair start provision between  
3 groundfish and crab fisheries. We request -- and they request  
4 that we have a legal opinion on this issue from NOAA General  
5 Council. Well, Mr. Chairman, I respond as follows: First of  
6 all, we can get our legal opinion from the Department of Law,  
7 which we've done for many years. I don't see NOAA General  
8 Council here, these proposals have been here and they have  
9 been well published and so on, so I'm not too concerned about  
10 that aspect of it. I don't know, ultimately whether we have  
11 legal jurisdiction to do this, but I think we do, and I think  
12 we can proceed with it. I disagree with the conclusion that  
13 prospecting with trawl gear does not happen. I think it is  
14 likely to happen, Mr. Chairman. Observer coverage is 30  
15 percent on vessels under 125 feet, the staff was unable to  
16 give us the number of vessels in the groundfish fishery that  
17 are of this length, but 60 percent of the Bering Sea fleet is  
18 under 125 feet and if there's some comparable number, it's a  
19 fair amount of -- of -- of vessels, and -- and as I understand  
20 that coverage, they've got to have coverage 30 percent of the  
21 time, so if they had their observers on early in this 90-day  
22 season, you could have every vessel under 125 feet with no  
23 observer. So therefore, you could have every vessel in the  
24 pollack fleet under 125 feet without an observer and, Mr.  
25 Chairman, I'm sorry, but there's prospecting going on now and  
26 I believe, absolutely, without any doubt, that there would be  
27 prospecting going on then. Why not? Finally, I -- I don't  
28 know that this is highly allocative. The only numbers this  
29 gentleman gave us were for 1998. We heard a lot of testimony  
30 about people coming in to the fishery in order to get into the  
31 license limitation program. So, maybe they did, maybe they  
32 didn't, but this gentleman's letter doesn't help us in that

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1 regard. I don't view this as a punitive measure as alleged by  
2 RC 132. Mr. Chairman, I view this as an -- as a continuation  
3 of practices which we have developed over time and which have  
4 been inherent in all of the -- in these crab fisheries, which  
5 is the concept of a fair start. Every time we've had a crab  
6 proposal come up, from tank inspections to travel to the  
7 grounds to pots to everything having to do with it, we always  
8 try to afford the opportunity to the vessels to hit the  
9 grounds with an equal opportunity relative to the number of  
10 pots they have and the vessel size to get at the resource in a  
11 fair and equitable manner. Mr. Chairman, that's what this  
12 proposal, to my mind, would do, it will make it fair and  
13 equitable and -- and such it meets the national standard, Mr.  
14 Chairman, which -- which asks us -- or not only asks us, it  
15 directs us to be fair and equitable to all fishermen, which  
16 is, I think, what we're trying to do. And, Mr. Chairman, it  
17 also directs us to make sure that particular individuals,  
18 corporations or other entities do not acquire an excessive  
19 share of the resource and that's what -- one other thing that  
20 I believe we're doing. Mr. Chairman, it directs us in  
21 conservation matters not to have allocation as the sole  
22 purpose, and I don't believe that we're doing that. I think  
23 that by allowing a fisherman -- or the opportunity for this  
24 prospecting, we can have a negative effect on the fishery and  
25 a negative effect on the resource as well. I think if  
26 prospecting occurs, we're going to have a lot of bycatch going  
27 on, and I think we're going to have a lot of mortality  
28 associated with such bycatch. So Mr. Chairman, I -- I know  
29 the substitute language is coming, I will support that when it  
30 gets here and incorporate my remarks at that time, but I just  
31 wanted to state early and categorically how I view this matter  
32 in light of RC 132, Mr. Chairman.

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1 CHAIRMAN WHITE: Mr. Krygier.

2 DOCTOR KRYGIER: Mr. Chairman, Mr. Coffey,  
3 since you weren't sure, Mr. Coffey, what the PSC was, I  
4 thought it would be useful to at least explain what -- what  
5 the argument was in RC 132. That was basically that they have  
6 a PSC, a prohibited species cap of bycatch for crab, both for  
7 red crab and for [indisc.] crab in the area which they fish  
8 and he was saying that that cap can be very constraining to  
9 his groundfish fishery and if they were to go in and prospect  
10 for crab, then it would constrain their directed groundfish  
11 fishery. Your counter to that, of course, is that they  
12 probably would not do prospecting with the observer on board.  
13 So I think that it would not affect the prohibited species  
14 cap. What you had said counters his allegation about the  
15 eating up the prohibited species cap.

16 CHAIRMAN WHITE: Thank you, Mr. Krygier. Mr.  
17 Umphenour.

18 MR. UMPHENOUR: Thank you, Mr. Chair, I'll  
19 address the allocation aspect of that RC and in -- in the  
20 context of this proposal. The history of the two gear groups  
21 in the fishery is that one gear group is primarily fishing in  
22 that fishery. Another gear group, that's just icing on the  
23 cake. Also, I believe the crab fishermen have been fishing in  
24 the Bering Sea longer than the pollack fishermen, because the  
25 majority of the pollack fleet, until not that -- not too far  
26 ago, were mainly aliens. The characteristics and the number  
27 of participants in the fishery, there are more of the crabbers  
28 than there are the trawl vessels and the characteristics, I  
29 would say is that the crab fishermen have more of a vested  
30 interest in the health of the resource than the pollack  
31 fishermen do because -- because that's not their main means of  
32 livelihood. Availability of alternative fishery resources.

1 There again, pollack fishermen -- or the trawlers have more  
2 alternatives available to them than any other people fishing  
3 that I know of in Alaska. The importance from each fishery to  
4 the economy of the State, that's doesn't really apply. The  
5 importance to the economy of the region, the economy of the  
6 region, it probably does apply if you consider the CDQ group,  
7 because if they wipe out -- because that gives them an unfair  
8 advantage, and the vessels that are fishing for the CDQ group,  
9 if they're fishing during the general fishery, then they --  
10 that would give them an unfair advantage. Importance of the  
11 fishery to provide recreation, it doesn't provide recreation.

12 And to address, also, that bycatch that gets recorded, that's  
13 only the bycatch the observer actually gets to see, and I'll -  
14 - I'll just refer to my previous comment as the bycatch that  
15 just gets run over and squashed and is dead on the bottom and  
16 doesn't come up, even if the observer is there counting  
17 bycatch, they can't count that bycatch, Mr. Chair.

18 CHAIRMAN WHITE: Mr. Dersham.

19 MR. DERSHAM: Mr. Chairman, never give up the  
20 mike when you have substitute language to bring forward.  
21 Before Mr. Umphenour and Mr. Coffey get to incorporate their  
22 remarks, I'll move to incorporate the substitute language  
23 contained on page 23 of RC 135 for Proposal 355, Mr. Chairman.

24 CHAIRMAN WHITE: Board ...

25 UNIDENTIFIED SPEAKER: Second.

26 CHAIRMAN WHITE: ... -- Board Members, is  
27 there any objection to using the substitute language on page  
28 23 of RC 135 for the language that's before us in ACR 27?  
29 Seeing and hearing none, that language is before us. Mr.  
30 Coffey and Mr. Umphenour, incorporations and for remarks.

31 MR. COFFEY: So incorporate.

32 MR. UMPHENOUR: I incorporate my previous

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1 remarks.

2 CHAIRMAN WHITE: Mr. Dersham.

3 MR. DERSHAM: I do also, Mr. Chairman.

4 CHAIRMAN WHITE: Mr. Nelson.

5 MR. NELSON: Mr. Chair, question on the  
6 papers, I don't have that many papers, and I looked for the  
7 back and it hasn't been ripped off. Thank you, Mr. Chair.

8 UNIDENTIFIED SPEAKER: Page 23, sir.

9 MR. NELSON: I'll look at Mr. Umphenour's. I  
10 don't have a page 23.

11 CHAIRMAN WHITE: Well, Mr. Umphenour's got it  
12 for you there, sir.

13 MR. NELSON: Thank you, Mr. Chair.

14 CHAIRMAN WHITE: Mr. Engel, please.

15 MR. ENGEL: Mr. Chairman, I would just like to  
16 remind the Board members that -- that we're being very  
17 consistent in our approach to allowing various types of gear  
18 to prospect prior to crab fisheries, king and tanner crabs.  
19 Just a couple hours ago, we developed the -- just a  
20 substantial body of regulation pertaining to the king and  
21 tanner crabs of Southeastern Alaska. And if you'll recall  
22 that we had provisions that you couldn't fish with things such  
23 as personal use, subsistence or sport pots prior to these  
24 commercial tanner and king crab fisheries for 14 days, and we  
25 further extended that to 30 days, Mr. Chairman, to give even  
26 greater break and we went one step further, Mr. Chairman, we  
27 took the gear that people might be prospecting, trying to get  
28 that advantage, get on top of the crabs, and some of these in  
29 Southeastern Alaska are like some of these we're talking about  
30 here, they only last for a very few days, which if people --  
31 everybody knows ahead of time where the crabs are at, the  
32 whole fleet lands in there in some of these areas, you could

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1 have severe conservation problems, or certainly major setbacks  
2 in rebuilding plans. In Southeastern, we took the -- the pots  
3 -- 10 pots per vessel from the personal use subsistence. We  
4 handicapped these people substantially to try to curb this --  
5 this problem we're talking about here so that I think we've  
6 seen a consistent application of this concern and desire of  
7 the Board to have a fair playing field, fair start and to not  
8 have all the gear pound down that first -- some of these --  
9 when you only got four or five days of fishing, if everybody  
10 happen -- or a lot of people happen to know where the crabs  
11 are at, it could have some very adverse consequences, Mr.  
12 Chairman. So, I just wanted to point out that this is  
13 consistent with the action the Board has taken previously at  
14 this meeting and in the past. Thank you, Mr. Chairman.

15 CHAIRMAN WHITE: Thank you, Mr. Engel. Mr.  
16 Dersham, please.

17 MR. DERSHAM: Mr. Chairman, the best I  
18 remember from the discussion of Proposal 291 yesterday, this  
19 falls under a Category 3 management measure. Everything else  
20 about gear falls under Category 3 and I -- I believe that this  
21 does too. If I'm wrong, Mr. -- Mr. Krygier can correct me,  
22 but that's where I believe it falls and it -- that means it's  
23 in the discretion of the Board, Mr. Chairman.

24 CHAIRMAN WHITE: Mr. Krygier.

25 DOCTOR KRYGIER: I was slightly distracted  
26 there, Mr. Chairman, but yes, we did determine that this was a  
27 Category 3 measure yesterday and that therefore it's at the  
28 discretion of the Board. I noted that Mr. Coffey, in his  
29 discussion, covered the national standards and -- and  
30 discussed other aspects of the Fishery Management Plan,  
31 including some of the objectives that the plan is trying to  
32 meet.

1 CHAIRMAN WHITE: Thank you very much, sir.  
2 Mr. Dersham, in addition.  
3 MR. DERSHAM: That's all I have, Mr. Chairman.  
4 CHAIRMAN WHITE: Let's move this along,  
5 gentlemen, is there any other further discussion? Errors or  
6 omissions, Mr. Donaldson?  
7 MR. DONALDSON: No, Mr. Chair.  
8 CHAIRMAN WHITE: Mr. Morrison.  
9 MR. MORRISON: No, Mr. Chairman.  
10 CHAIRMAN WHITE: Anything from the Department  
11 of Law?  
12 MR. NELSON: I think Mr. Umphenour addressed  
13 allocation criteria. I think this does have an allocative  
14 effect and I'm glad he did that. I -- I can't remember  
15 whether costs were mentioned, but I'm sure they would have  
16 been.  
17 CHAIRMAN WHITE: Mr. Umphenour on cost.  
18 MR. UMPHENOUR: Thank you, Mr. Chair. I don't  
19 think that it will -- there will be any additional costs to  
20 the private person to participate in this fishery, Mr. Chair.  
21 CHAIRMAN WHITE: Anything in addition, Mr.  
22 Umphenour?  
23 MR. UMPHENOUR: Question.  
24 CHAIRMAN WHITE: Mr. Umphenour's question is  
25 heard, Ms. Cote.  
26 MS. COTE: Final action Proposal 355 as  
27 amended. Dersham?  
28 MR. DERSHAM: Yes.  
29 MS. COTE: Nelson?  
30 MR. NELSON: Yes.  
31 MS. COTE: Coffey?  
32 MR. COFFEY: Yes.

1 MS. COTE: White?  
2 CHAIRMAN WHITE: Yes.  
3 MS. COTE: Umphenour?  
4 MR. UMPHENOUR: Yes.  
5 MS. COTE: Engel?  
6 MR. ENGEL: Yes.  
7 MS. COTE: Motion carries, six, zero, one, Mr.  
8 Chair.  
9 437  
10 [End of Requested Portion]  
11

**MISCELLANEOUS INFORMATION FROM  
ALASKA BOARD OF FISHERIES  
ADMINISTRATIVE RECORD FROM  
MARCH 1999 MEETING**

Proposal # 291 -

**5 AAC 34.8XX OPERATION OF OTHER POT GEAR IN REGISTRATION AREA T.** Extend the exclusion period when no pot gear could be fished from 14 days to 30 days prior to the opening of Bristol Bay (AREA T) commercial king crab fishing season as follows:

**5 AAC 34.8XX OPERATION OF OTHER POT GEAR IN REGISTRATION AREA T.** In Registration Area T, a person or vessel that operates commercial, subsistence, personal use, or sport pots during the 30 days immediately before the opening of a commercial king crab season in Registration Area T may not participate in the commercial king crab fishery in Registration Area T.

Staff Reports: RC4 (Tabs 1, 2, 13, 14, 17, 27, 28, 29)

Staff Comments: RC4 (Tab 37, page 19)

AC Reports: RC110

Public Comments: RC69, RC85, RC102, RC111

Narrative of Pros and Cons:

This proposal extends the exclusion period when no pot gear could be fished, in the Bristol Bay king crab management area, from 14 to 30 days. The Department proposed to close all of Area T except for a small section to allow for pot cod harvest.

The public that was in favor of this proposal was in consensus that all of Area T should be closed. The Department is neutral on this and had only proposed to leave open the small section of Area T after there had been concerns expressed about that area at an earlier industry meeting.

Concerns were expressed over excluding vessels that fish both the trawl fishery and the Bristol Bay red king crab fishery. There was discussion on whether vessels were considered economically dependent of the Bristol Bay red king crab fishery.

The segment of the public who were in favor of this proposal agreed that this should only pertain to the Bristol Bay king and Bering Sea Tanner crab fisheries. There was consensus to support proposal 291 with an amendment to include all the Area T and trawl gear. It was also decided to support proposal 355 with an amendment excluding Bering Sea crab fisheries. This would not pertain to jig or longline gear.

There was no public consensus on this matter and the Chairman requested all parties submit a short written summary for the record copy of their points for or against this proposal.



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***POSITIONS & RECOMMENDATIONS***

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**Public Panel Recommendation:**

no consensus

**Board Committee Recommendation:**

adopt as amended

**Regulatory or Substitute Language:**

See attached for proposal 291.

**Proposal # 355 - 5 AAC 34.053. OPERATION OF OTHER POT GEAR, AND 5 AAC 35.053. OPERATION OF OTHER POT GEAR.** Amend these sections to provide the following:

A person or vessel that operates commercial, subsistence, personal use or sport fishing gears [POTS] in the 30 days immediately before the opening, or prior to registering for a commercial king or Tanner crab fishery in a crab registration area, may not participate in a commercial crab fishery in the crab registration area (where groundfish gear of any kind has been used).

Staff Reports: RC 4, tabs 1, 3, 4, 19 (Federal Requirements), 20 (FMP), 27, 30, & 34

Staff Comments: RC 4, tab 37, page 33

AC Reports: RC 110

Public Comments: RC 69, 85, 102 & 111

**Narrative of Pros and Cons:** This proposal would include any fishing gear to the 30 day no operation of pot gear before any king or Tanner crab fishery. There is a perceived problem of trawl vessels having an unfair advantage over crab fishers. The trawl vessels can use (misuse) pelagic gear in the pollock fishery up to the time to register for the crab fishery. Of the pollock trawl vessels participating in both fisheries, NMFS observer data does not indicate an increased bycatch of red king crab in October. The vessels under 125 feet would only have 30% groundfish observer coverage, therefore the opportunity for exploratory fishing is present. Trawl gear is an efficient crab survey method. However, fish ticket data does not show an increase in average catch of those vessels compared to similar length crab vessels. It was noted that the trawl vessels often have to enter the crab fishery with trawl equipment still in place on the deck and that would decrease efficiency. Trawlers were aware of this meeting and are not present. Change language to include only pot or trawl gear, (longline and jig gears are not to be included). Some felt that 30 days was too restrictive and a change of the red king crab season to October 15 would solve the problem. The department is neutral on this proposal.

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### ***POSITIONS & RECOMMENDATIONS***

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**Public Panel Recommendation:** Consensus - Support for pot and trawl gear, but not on 30 days, some want 14 days

**Board Committee Recommendation:** Support - for 30 days, and for pot and trawl gear

**Regulatory or Substitute Language:** See Attached

**Proposal # 354 - 5 AAC 34.053. OPERATION OF OTHER POT GEAR, and 5 AAC 35.053. OPERATION OF OTHER POT GEAR.** Amend these sections to provide the following:

A person or vessel that operates commercial, subsistence, personal use or sport fishing gears [POTS] in the 14 days immediately before the opening, or prior to registering for a commercial king or Tanner crab fishery in a crab registration area, may not participate in a commercial crab fishery in the crab registration area (where groundfish gear of any kind has been used).

Staff Reports: RC 4, tabs 1, 3, 4 27, 30, & 34

Staff Comments: RC 4, tab 37, page 32

AC Reports: RC 110

Public Comments: RC 69, 85, 102 & 111

Narrative of Pros and Cons: This proposal would include any fishing gear to the 14 day no operation of pot gear before any king or Tanner crab fishery. The proposal is addressed in the Proposal # 355 discussion.

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***POSITIONS & RECOMMENDATIONS***

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Public Panel Recommendation: No Action

Board Committee Recommendation: No Action - based on action taken on Proposal # 355

Regulatory or Substitute Language: None

**Substitute Language for Proposal # 355**

**5 AAC 35.053 (1) OPERATION OF OTHER [POT] GEAR**

**(1) except as provided in (a) of this section, a person or vessel that operates commercial, subsistence, sport, or personal use pots, during the 14 days immediately before the opening of the commercial Tanner crab season in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J where the fishing with pots occurred, may not participate in the commercial Tanner crab fishery in the Tanner crab registration area, or with respect to Registration Area J, in that district, where fishing with pots occurred; a person or vessel that participates in a commercial Tanner crab fishery in a Tanner crab registration area or, with respect to Registration Area J, in that district of Registration Area J, may not operate commercial, subsistence, spot or personal use pots in that registration area, or with respect to Registration Area J, in that district where fishing with pot occurred during the 14 days after the close of the commercial Tanner crab season; a vessel or person may operate other commercial pots in a Tanner crab registration area after putting crab pots in storage, as specified in 5 AAC 35.052, and unless the registration is already invalidated in 5 AAC 35.020(k), after invalidating the vessel's registration by contacting, in person, a local representative of the department:**

**(a) a person or vessel that operates commercial, subsistence, sport or person use pots, or trawl gear in the Bering Sea District of Registration Area J, during the 30 days immediately before the opening of the commercial *C bairdi* or *C. opilio* Tanner crab seasons in that district, may not participate in the commercial *C bairdi* or *C. opilio* Tanner crab fisheries in that district.**

**(2) during a commercial Tanner crab fishery, a person or vessel may stop participating in the Tanner crab fishery and instead operate commercial pot other than Tanner crab pots, if the Tanner crab pots are put in storage as specified under 5 AAC 35.052, and the vessel owner or the owners agent contacts a department representative, in person and requests that the Tanner crab registration be invalidated.**

**ALASKA CRAB COALITION**

3901 Leary Way N.W. Ste. 6  
Seattle, Washington 98107  
206 547 7560  
206 547 0130 Fax  
Email: [acc-crabak@msn.com](mailto:acc-crabak@msn.com)

RC 130

DATE: March 23, 1999

MEMO TO: Dr. John White, Chair, Alaska Board of Fisheries

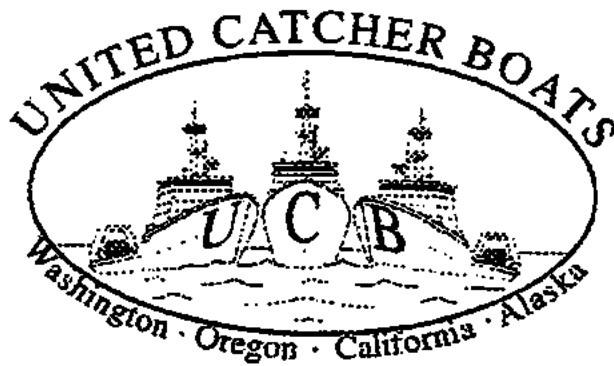
FROM: Arni Thomson, Executive Director *AT*

RE: ADDITIONAL COMMENTS FOR THE ADMINISTRATIVE RECORD  
ON PROPOSALS #291, #354 AND #355

1. ADF&G proposal #291 recommends 30 prohibition on use of groundfish pot gear only, as a pre-condition for registration in the Area T king crab fishery.
2. Presently there is no restriction on use of pelagic trawl gear in the highly productive statistical areas in king crab area T and use of bottom trawl gear is also allowed in other portions of Area T. There are up to 35 pollock trawl vessels that now participate in area T king crab, immediately following the close of the pollock fishery, that are exempt from prospecting for crab with the use of groundfish gear. This allows for prospecting right up to the season opening date. Trawl gear is widely recognized as very effective and efficient gear for catching king and tanner crabs. Similarly, the trawl vessels fishing with pelagic trawl gear for pollock during the winter opilio fishery, can immediately switch over and enter the opilio crab fishery, subject to no fair start rule on a groundfish gear prohibition, such as pot boats are subject to in a crab registration area. In 1999, 5 pollock vessels switched over to crab immediately after the close of the pollock fishery, but a total of 13 pollock vessels fished in the opilio fishery. (Reference RC 114 and 124, conservation and management observations of Bering Sea crab boat operators of pollock to crab corssover boats in the 1999 opilio season.)
3. Pollock trawlers claim they will be unfairly, adversely impacted by this action, and that they are economically dependent on crab fisheries. However, pot boats that normally fish for pacific cod prior to the king crab season are also affected, but they are willing to foregoe the opportunity to fish cod in support of the 30 day prohibition on groundfish trawl or pot gear in a king or tanner crab registration area. ACC has over fifty vessels qualified to fish for cod in the Bering Sea that could be adversely affected too, that are willing to forego this opportunity. (RC 121, Petition for Emergency Rule to NPFMC dated December 13<sup>th</sup>, 1999, with attachments, illustrates that pollock vessels are clearly economically dependent on pollock and other groundfish, not dependent on crab fisheries. It also shows the crabbers high degree of

dependence on crab and few if any other alternatives. RC 122, crabber/pollock vessel supports limitations on pollock vessels. RC 123, correspondence from U.S Senate to NPFMC summarizing problems of American Fisheries Act pollock vessels in crab and other fisheries.)

Brent C. Paine  
Executive Director



Steve Hughes  
Technical Director

PE 152

March 23, 1999

Mr. Dan Coffee, Chairman  
Alaska Board of Fisheries Bering Sea Crab Subcommittee  
Captain Cook Hotel  
Anchorage, AK

RE: Comments to Committee D and Committee E, Bering Sea Crab Issues

Dear Mr. Coffee,

Thank you for allowing me to present comments on the various proposals before the Board pertaining to Bering Sea crab management. This letter will serve as United Catcher Boats' comments to the proposals reviewed by Committee D and E yesterday.

United Catcher Boats is an association of 63 catcher vessels, of which all trawl in the North Pacific, and 28 presently participate in the Bering Sea crab fisheries. We are combination vessels, most of which pioneered both the crab and groundfish fisheries in the North Pacific. The impacts of the various proposals reviewed yesterday to the vessels in UCB are huge. For example, the 28 vessels that presently fish in the Bering Sea crab fisheries potentially could be excluded from these fisheries. I ask that you and your fellow Board members realize the economic loss to these vessels when considering the following proposals.

**Proposal 354 & 355, OPERATION OF OTHER POT GEAR** Regarding this proposal, UCB strongly requests the Board to not adopt either proposal for the following reasons:

1. **TOO PUNITIVE** UCB vessels have historically depended on a number of crab and groundfish fisheries. This action would force our vessels to forgo 30 days of groundfish fishing prior to the opening of a crab fishery. Do you have information that provides you with the cost to the 39 vessels (vessels that currently trawl and crab in the Bering Sea) having to forgo fishing for 30 days prior to a crab opener if they choose to fish crab? Our pollock fishery in the Bering Sea now lasts about 90 days. If we choose to fish both the *opilio* and BB red king crab fisheries, we would have to forgo 60 days of groundfish fishing (primarily Pollock A, B and C seasons). The effect of this action would be this: we would either fish in the pollock fishery or the crab fishery, and no longer would be able to fish in both fisheries. If we forgo 60 days of pollock fishing, this would bankrupt these operations. 39 vessels is over 30% of the current Bering Sea catcher vessel pollock fleet.

2. **HIGHLY ALLOCATIVE** The effect of these proposals would be to reallocate the amount of crab harvested by the vessels that fish for groundfish to the vessels that don't fish for groundfish. Approximately 28 of the UCB member vessels participated in the BB red King crab fishery in 1998. Our average catch was 100,000 lbs., that is a total of 2.8 million pounds of crab, or roughly \$3 million reallocated just from the UCB vessels.

3. **PROSPECTING WITH TRAWL GEAR DOES NOT HAPPEN** The proposal author argues that trawl gear can be used to find out where the crab are located prior to the start of the crab fishery. This is ludicrous for the following reasons:

- Crab PSC is a precious thing that constrains the directed groundfish fishery. It is not squandered to prospect for good crab grounds
- Bottom trawl Groundfish fisheries in October are mostly closed due to attainment of the TAC or PSC
- The most productive red king crab grounds are closed to non-pelagic trawling most of the year
- The pollock fishery is allocated 1,970 red king crab and 14,077 bairdi as PSC. NMFS data show that these PSC caps have never been reached, and that in the month of October of 1998, a deminimus amount king crab were taken as bycatch in the pollock fishery.

4. **BOARD LACKS LEGAL JURISDICTION** We believe the Board of Fisheries does not have legal authority to regulate a federal groundfish fishery. This proposal effectively creates a federal "fair start" regulation that affects the Bering Sea groundfish fisheries, a fishery that is managed by the federal government. In addition, we believe the federal Crab FMP does not provide a authority for the Board of Fisheries to create fair start provisions between groundfish and crab fisheries. We request that the Board request a legal opinion on this issue from NOAA General Counsel.

## **PROPOSAL 287 FISHING SEASONS FOR AREA T**

UCB strongly requests the Board to not adopt either proposal for the following reasons:

1. **HIGHLY ALLOCATIVE** Vessels that normally fish in the BS pollock fishery would be forced to decide between participating in the BB king crab fishery or the BS pollock fishery as the pollock fishery occurs throughout the month of October. For example, the department recently changed the opening date of the BS hair crab fishery to accommodate the vessels that fish crab in other areas (Pribs & St. Mat). UCB vessel owners would appreciate the same accommodation afforded the crab fleet.

2. **REDUCTION IN YIELD** Bob Otto stated at the committee yesterday that the highest yield of meat per crab occurs on or around Nov. 1. By backing the fishery into early October, the fleet is forgoing the maximum yield, or value, per crab. No analysis has been done to provide you with the information needed to determine what this yield loss would be. For us, the attempt to force out vessels who fish pollock from the crab fishery is a poor trade off for fishing on crab with less value.

## **ROPOSAL 288 HARVEST STRATAGY**

UCB vessel owners support the current Department's use of the length-based model. Thus we ask the Board to not support this proposal. Rather, the Board should support department research into the stock/recruit relationship for red king crab.



## **PROPOSAL 285 & 286 POT LIMITS**

CB vessel owners choose to not engage in a "big boat - small boat" allocation battle, as our organization has both big and small vessels.

However, we find it disingenuous that the vessel owners who argue for removal of the crabber/trawler vessels based on the argument that the fishery occurs in too short of a period can argue that effort (pots) not be reduced.

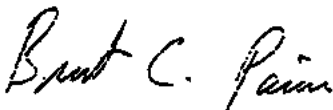
We ask that the Board ask the Department of Fish and Game if they believe that a reduction in the number of pots would result in lengthening the fishery to 6 or more days. In other words, can the Department determine, qualitatively or quantitatively, what the limit of number of pots is to result in a 6-day BB red king crab fishery.

## **SOME GENERAL COMMENTS**

We realize the attempts by the crab vessel owners and their association's to remove from the crab fisheries the vessels that are qualified to fish for pollock in the Bering Sea. This was attempted at the NPFMC level in October 1998 and now at the Board level indirectly through proposals 355 and 287. What is at issue is the overcapitalization of the fleet, something that the Council has attempted to address through License Limitation. The factors involved are determination of: 1) present participation, historical fishing practices and dependence on the fishery (Mag/Stevens Act and National Standards). Alternatives to reduce effort need to be measured against these standards, not indirectly through fair start and season start date proposals that have the effect of indirectly reducing effort and thereby reallocating the harvest.

We ask that the Board know the economic effects of such proposals before acting. Thank you for your consideration of our comments.

Sincerely,



**Brent Paine**

PROPOSALS: 354-355  
# 291

**ALASKA CRAB COALITION**  
3901 Leary Way N.W. Ste. 6  
Seattle, Washington 98107  
206 547 7560  
Fax : 206 547 0130  
Email: acc-crabak@msn.com

RC # 57

DATE: October 22, 1998  
MEMO TO: Laird Jones, Executive Director  
Division of Boards  
FROM: Arni Thomson, Executive director



RE: ACC PROPOSALS 354 AND 355 SCHEDULED FOR MARCH 1999 SHELLFISH MEETING, ARE NOT STATEWIDE PROPOSALS, BUT ONLY APPLY TO THE BERING SEA AREA

*This memo is to followup on our discussion about ACC proposal numbers 354 and 355 on pages 273 and 274. As I explained to you, ACC identified these proposals as Bering Sea fishing area proposals. However, they have been mistakenly placed in the statewide section of proposals. The proposals are relative to ADF&G proposal 291, operation of other pot gear in Area T, of the Bering Sea.*

The ACC would appreciate, if as you suggested, you could circulate this memo to Regional Directors to inform them that the ACC proposals to prohibit the use of all types of groundfish gear, not just pot gear, for 14 or 30 days prior to registration in a king or tanner crab fishery in the Bering Sea. The proposal addresses the problem of pollock trawlers, participating in the B season, operating in Area T prior to the Area T king crab fishery, then switching over to fish king crab on November first. These vessels using trawl gear for groundfish can operate up to the time of tank inspection, while crab vessels using pot gear cannot fish in Area T within 14 days of the season opening. The practice conflicts with the fair start policy. In 1997, 36 of these vessels participated in the king crab fishery. They are also operating in the Bering Sea section of Area J during the opilio season and a few of them, when finished with pollock, immediately switch over to crab, again with no 14 day restriction. The ACC was well aware at the time of submitting the proposal, that the problem addressed, is likely peculiar to the Bering Sea and did not wish to impact fisheries in other regions with this proposal.

The ACC would also appreciate it if you could place these proposals in the Bering Sea section of shellfish proposals when organizing the roadmap/agenda for the March meeting.

SEARCHED  
SERIALIZED  
INDEXED  
MAY 20 1999

REVISED: 12/2/98

LIST OF BERING SEA SB 1221 COOP-ELIGIBLE POLLOCK/GROUNDFISH TRAWLERS, NPFMC APPROVED, ALTERNATIVE #9 FOR THE LICENSE LIMITATION PROGRAM, FOR BERING SEA KING & TANNER CRAB FISHERIES. TOTAL VESSELS: 41

VESSEL NAME	ADF&G	LOA	OWNERSHIP INFORMATION
AJ	57934	150	Saga Sfds. (49% Norway) WA
ALASKA DAWN (OK alt. 4)	69765	90	William Gilbert AK
ALDEBARAN	48215	132	Trident Sfds. WA
ALSEA	40749	124	Halls OR
AMERICAN EAGLE (OK alt. 4)	00039	120	R. Tynes, J. Wabey WA
ARCTIC WIND	01112	123	Victor Sfds. WA
ARCTURUS	45978	132	Trident Sfds. WA
ARGOSY (OK alt. 4)	38547	124	Halls OR
BLUE FOX (Attached, NMFS memo)	62892 or 66039 ?	85	Pacific Draggers Inc. OR
COMMODORE	53843	133	Victor Sfds., J. Johannesen WA
DOMINATOR (OK alt. 4)	08668	130	Trident Sfds. WA
DONA MARITTA (OK alt. 4)	51672	152	Trident Sfds. R. Desautel WA
ELIZABETH F	14767	90	Brekken/S. Stutes AK
FIERCE ALLEGIANCE (OK alt. 4)	55111	166	R. Mezich WA
FLYING CLOUD (OK alt. 4)	32473	124	Trident Sfds. WA
GOLDEN DAWN (CDQ)	35687	149	Trident Sfds., APICDA AK
GOLDEN PISCES (OK alt. 4)	32817	98	Elmer McNabb OR
GUN MAR	41312	172	G. Ildhuso (Ocean Phoenix) WA
LADY JOANNE (OK alt. 4)	62922	58	David Wilson AK
LISA MARIE (CDQ)	70221	78	YDFDA AK
MAJESTY	60650	106	Trident Sfds. WA
MAR GUN	12110	110	G. Ildhuso (Ocean Phoenix) WA
MARCY J (OK alt. 4)	00055	97	H. Jones AK
MARGARET LYN	31672	103	R. Czeisler (Ocean Phoenix) WA
MARK I	06440	98	C. Garbrick (Ocean Phoenix) WA
MUIR MILACH	41021	86	D. Fraser WA
NORDIC FURY	00200	93	Hovik/Stone (Ocean Phoenix) WA
NORDIC STAR	00961	123	C. Swasand WA
OCEAN HARVESTOR (OK alt. 4)	00101	108	K. Ness (Trident partner) WA
OCEANIC	03404	122	E. Langesater (Ocean Phoenix) WA
PACIFIC FURY	00033	110	M. Stone (Ocean Phoenix) WA
ROYAL AMERICAN	40840	105	O. Austneberg, WA
SEA STORM	40969	123	W. Pereyra (50% S. Korea) WA
SEA WOLF	35957	143	AK. Boat Co. WA
SEADAWN	00077	124	F. Yeck OR
STAR FISH (OK alt. 4)	00012	123	C. Swasand WA
STARLITE	34931	123	C. Swasand WA
STARWARD	39197	123	C. Swasand WA
STORM PETREL	39860	123	Victor Sfds., J. Johannesen WA
VESTERAALEN	38342	124	E. Pedersen (Ocean Phoenix) WA
VIKING EXPLORER (OK alt. 4)	36045	125	Trident Sfds. WA

MAJOR PERMIT HOLDERS: Ocean Phoenix group 7, vessel owners are partners in the mothership; Swasand/Starbound 4; Trident Sfds 9; Victor Sfds./Johannesen 3; Sub Total, 23 of 41.

ADDITIONAL SB 1221 VESSELS CURRENT PARTICIPANTS IN BSAI CRAB NOT QUALIFIED UNDER ALT. #9: DONA LILLIANA, HALF MOON BAY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, VANGARD. Sub Total: 7. (Total SB 1221 Alternative 4 Qualified: 13)

# Alaska Fisheries Conservation Group

Bering Sea Crab Vessel Owners from Alaska, Washington & Oregon

Box 910 Woodinville, WA 98072

(425) 488-7708

Fax (425) 823-3964

## Recommendations to the Alaska Board of Fisheries on the 1999 Bering Sea Crab Proposals

- |     |   |               |
|-----|---|---------------|
| 1.  | <b>Proposal #304 (State-funded shellfish observer program)</b>  | <b>FAVOR</b>  |
|     | a. Need strong industry oversight board to administer cost-recovery financing and data collection at no more than a 15% observer coverage rate. |               |
| 2.  | <b>Proposal #305 (Aleutian Islands shellfish observers)</b>   | <b>FAVOR</b>  |
|     | a. 100% observer coverage requirement is cost-prohibitive for catcher-vessels. Suggest 25% coverage in red and brown crab fisheries             |               |
| 3.  | <b>Proposal #295 (Aleutian Islands pot storage)</b>   | <b>FAVOR</b>  |
|     | a. Pots are very expensive to replace or repair. Bycatch minimized with escape rings and open bio-panel   |               |
| 4.  | <b>Proposal # 296 (King crab lawful gear)</b>   | <b>FAVOR</b>  |
|     | a. Longline pot gear preservation issue: flags are commonly damaged by strong currents  |               |
| 5.  | <b>Proposal #359 (Recovery of lost king crab pots)</b>  | <b>FAVOR</b>  |
|     | a. Sensible and safe way to find and recover lost pot gear)   |               |
| 6.  | <b>Proposal #355 ( 30-days fair start for trawl and pots)</b>   | <b>FAVOR</b>  |
| 7.  | <b>ACR 27 ( Pre-season CDQ fishing)</b>   | <b>OPPOSE</b> |
|     | a. Nullifies fair start philosophy.   |               |
| 8.  | <b>Proposal #393 (No fishing zone)</b>  | <b>OPPOSE</b> |
|     | a. Insufficient justification   |               |
| 9.  | <b>Proposal #295 (reconsider existing regulations)</b>  | <b>FAVOR</b>  |
|     | a. EXCEPT 4-million pound GHL fishery cut-off   |               |
|     | b. Keep 12-million pound threshold for 200/250  |               |
|     | c. No pot limit reductions  |               |
| 10. | <b>Proposal #287 (Area T opening date)</b>  | <b>FAVOR</b>  |
|     | a. Better chance to export product in time for Japan's Obon festival ( biggest annual market for king crab)                                     |               |

- 11. **Proposal # 288 ( Area T exploitation rate)** **FAVOR**
  - a. Jie Zheng told the NPFMC's Crab Plan Team on November 30: "We never said that 20% exploitation rate was an over-fishing definition."
  
- 12. **Proposal #289 ( Area T size-limit)** **OPPOSE**
  - a. Fleet economics require maximum number of 4L and 3L sections which can only be derived from 6.5-inch size limit.
  
- 13. **Proposal # 291 ( Operation of pot gear)** **FAVOR**
  - a. 30-day pre-season closure enhances opportunity for fair start by discouraging last minute prospecting
  - b. Needs to include pots and trawls, not longlines or jigs (Forrest showed that trawl bycatch of king crab increases dramatically just before king crab season opens)

# DRAFT

Alaska Board of Fisheries  
King Crab Management

April 1988

regulations by catcher/processor vessel and saw catch statistics which clearly demonstrated that some operators of these vessels have routinely failed to comply with king crab size limit regulations. For these reasons, the board required that all vessels processing red, blue, or brown king crab, or *C. bairdi* Tanner crab, carry an onboard observer during all processing operations. Exceptions are provided for vessels that process in locations where ADF&G shore-based samplers are located. ADF&G was authorized to develop guidelines and regulations to implement the program by the September 25, 1988 opening of the Bristol Bay red king crab fishery.

## King Crab Harvest Strategy - Statewide

The board replaced its current exploitation rate table with a statement of the types of information which can be used to establish guideline harvest levels. The previous harvest strategy was not applicable for all king crab stocks statewide. It was not possible to apply the table of exploitation rates to stocks for which there was inadequate information. In other instances, rigid application of the table produced illogical conclusions. The table would have required, for example, exploitation rates of 30-35 percent on stocks with insignificant, but stable levels of prerecruits. The statement which was adopted is more compatible with provisions of the proposed NPFMC fishery management plan which require that exploitation rates and guideline harvest levels be calculated using the best available information.

## Miscellaneous Statewide Regulations

Fishermen who wish to participate in a commercial king crab fishery are now prohibited from fishing in that area with subsistence or personal use king or Tanner crab pots during the 14 days before the commercial opening. The board was concerned with reports that some individuals may use subsistence or personal use pots to prospect for and stockpile crab prior to the commercial opening.

The board required that valid interim use permits be in the possession of the vessel operator at the time of final tank inspection. A tank inspection is generally the last activity required of a vessel to validate its registration before departure for the fishing grounds. The inspection now also represents a last opportunity to insure that all required documentation is in order before crab are taken.

July 23, 1999

Rick Lauber, Chairman  
North Pacific Fisheries Management Council  
Anchorage, Alaska

TOTAL PAGES: 9

RE: Comment On 30 Day Pot and Trawl Gear Exclusion For Area T King Crab Fishery.

Dear Rick,

It is important that the 30 day gear exclusion prior to the Bristol Bay red king crab fishery not be modified in any way. There is a very high likelihood that prospecting by crab qualified trawlers will occur this year. Last year, about 50 million pounds of pollock were caught by the inshore catcher vessels in area 509 (an area where good king crab fishing was last year) during the month of October, just prior to the opening of king crab. NMFS data shows that in some recent years, there has been high levels of observed bycatch of king crab during October. These vessels were required to have only 30% observer coverage. It is very likely that some amount of prospecting did occur last year, and will occur again this year. In order for a fair start to occur for the Bristol Bay red king crab season, the 30 day gear exclusion provision is necessary. (See attached NMFS Statistical Area chart).

I am also opposed to any sort of modification to move the Eastern boundary line to 164 degrees West longitude or the Southern boundary line to 55 30', or any other such modifications of Area T. Neither trawl nor pot gear should be allowed in Area T, 30 days prior to the opening of king crab. To propose any sort of modification to the Area T Westward boundary would be very short-sighted for reasons I explain below.

I know there is crab West of 164 because I have fished that area extensively in the past, and can document this with log book data from 1978 and 1980. Our vessels experienced extremely good fishing West of 166, all the way to 166 40' during 1978 and 1980. The locations of the gear for our vessel F/V Bering Sea during these two king crab seasons are provided on the accompanying charts. The black dot shows the area where good fishing occurred for the F/V Bering Sea in each of those years. The fishing was so good in 1980 that our three boats together were able to deliver millions of pounds of red king crab from this area. Most of the fleet began the season much farther to the East, but by the end of the season, many vessels in the fleet had shifted there gear out West where our vessels were.

Some may argue that the king crab resource is not nearly as large today as it was in 1980, and could not possibly stretch beyond 166 today. It may be true that the resource is much

smaller now than in 1980, but the NMFS Bering Sea Crab Survey report for 1998 shows a distribution of the stock similar to the 1980 NMFS Bering Sea Crab Survey, except that the maximum extent of substantial stocks has shifted 40' East in 1998. (See attached Survey Charts).


If the surveys are any indication, it was likely that substantial amounts of king crab were all the way out to 166 last year. However, since crabbers can not prospect, the majority of effort occurred well East of this area (one of our vessels fished up to 164 and did quite well last year), where king crab are known to be nearly every year. It is quite a gamble to set a load of gear past 165, since it would be very difficult to locate a substantial pod of crab. We were able to find them out there in 1978 and 1980 because the seasons were long enough to spend ample time prospecting during the season. If someone had the ability to prospect prior to the season today, it would be possible to find a pod of crab farther West of where the majority of vessels fish, and work on that pod by oneself for the season, and do extraordinarily well. I have no doubt there are legal king crab West of 164, but are simply difficult to locate, and the proportion of legal crab in this area will increase as the biomass of crab increases, pushing the resource further West.

Likewise, it is very possible that pods of legal males exist South of 55 30'. I have experienced excellent king crab fishing around the horseshoe area, South of 55 30', down to 54 36'. In addition, Sverre Hansen, skipper of the F/V Foremost in the early 1970's (current owner of the F/V Northwestern) will attest to the king crab fishing in this area at that time. As a matter of fact, one year around 1970, he continued fishing just off Cape Sarichef through Christmas, while crews on the other vessels went home. Today, it is unknown to the general crab fleet if any abundance of legal males are in this area, because prospecting is not allowed prior to the season, and there is not enough time during the season to prospect.

The boundaries of Area T have been in effect for a long time and extend to 168 degrees West longitude to encompass the full range of Bristol Bay red king crab habitat. Therefore, Area T is the only appropriate boundary line for the 30 day gear exclusion prior to the Bristol Bay red king crab fishery.

I am not saying that trawlers have prospected in the past. I'm simply saying there is a very large loophole available for them to prospect for king crab prior to the opening of the season. It would be expected that some vessels would take advantage of this opportunity in the future, particularly if the GHLS continue increasing as anticipated, and the fishery becomes more valuable.

Sincerely,

  
Krist Poulsen

cc: John White, Chairman  
Alaska Board of Fisheries



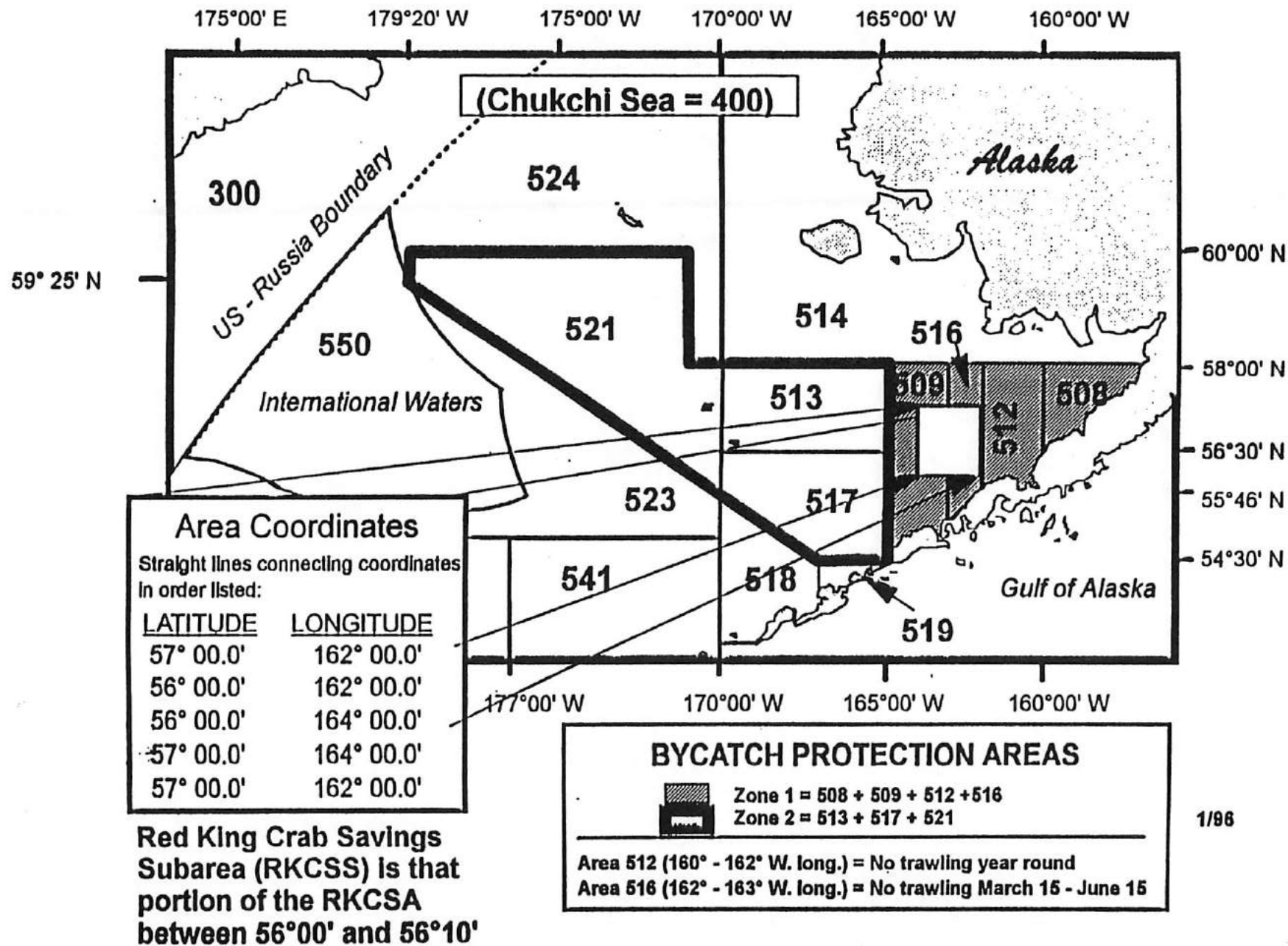
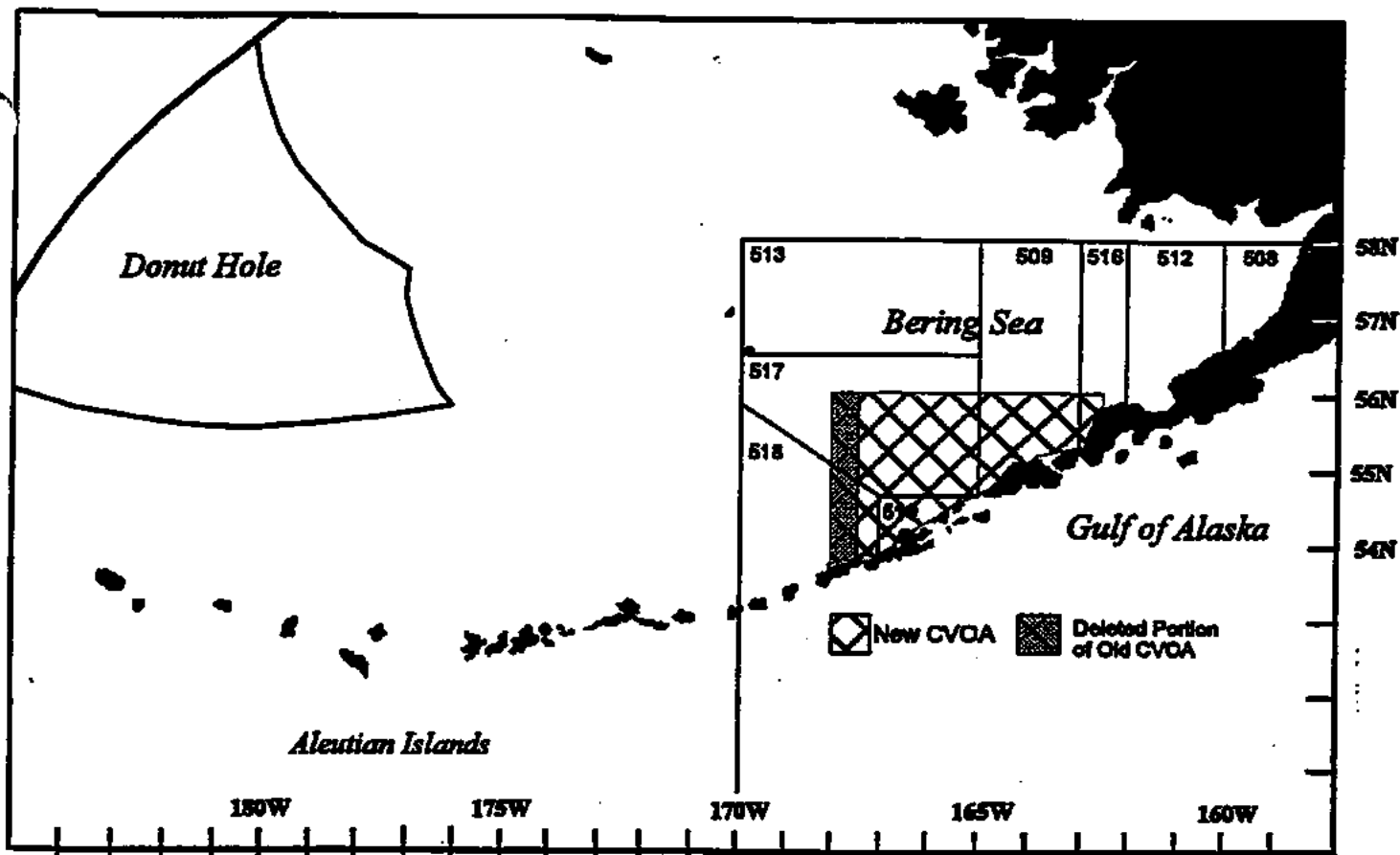


Figure 11. Red King Crab Savings Area (RKCSA)



### Catcher Vessel Operational Area (CVOA)

**Rationale for Closure:** Established to limit access to pollock within the area to catcher vessels delivering to the inshore component during the pollock "B" season.

**Origin:** Implemented as part of Amendment 18 (inshore/offshore) on June 1, 1992, and revised in June 1995.

**Description of Area:** The offshore component is prohibited from fishing in the CVOA during the pollock "B" season. The CVOA is defined as that area in the Bering Sea subarea south of 56°00' N. latitude, and between 163°00' and 167°30' W. longitude.

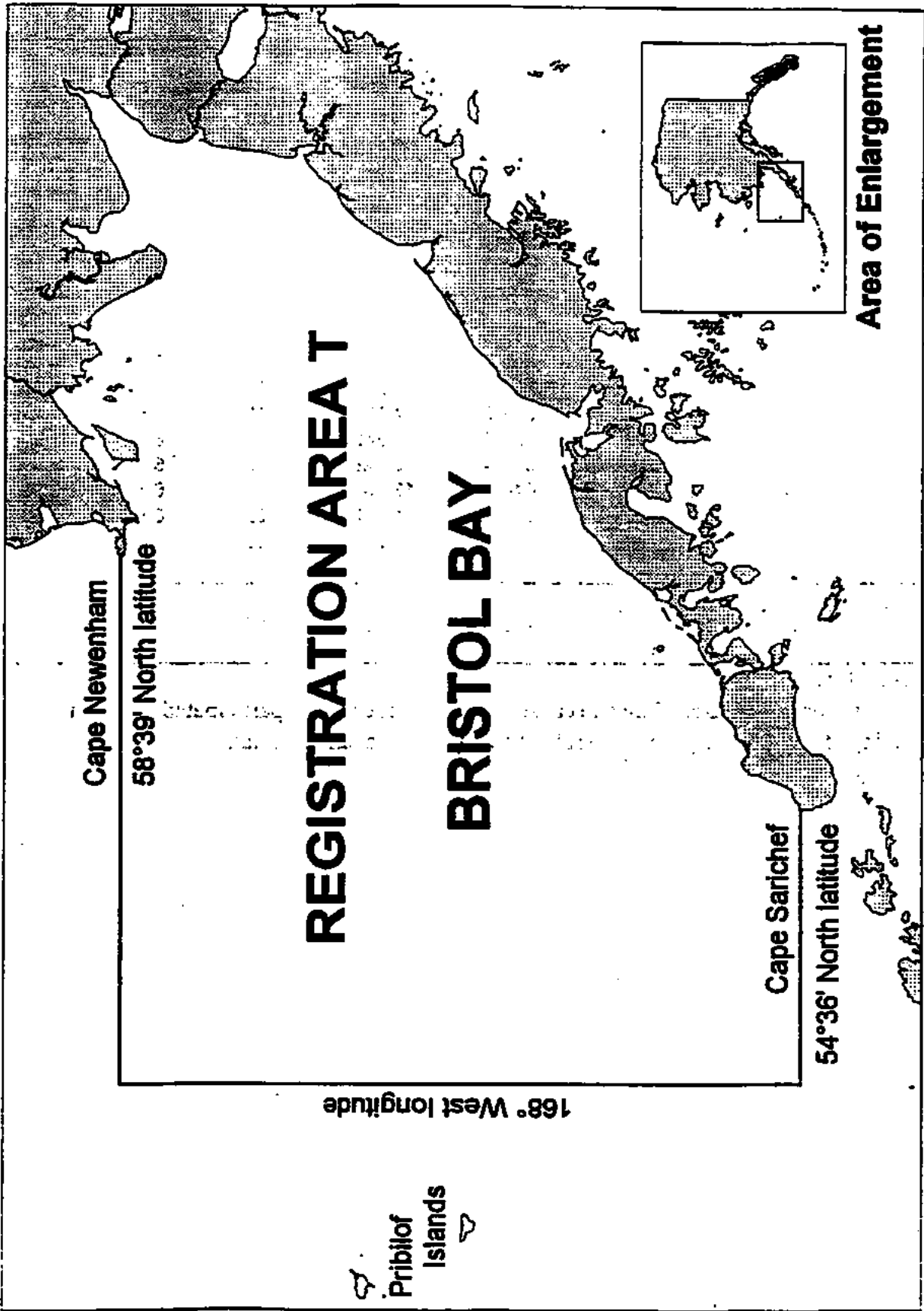
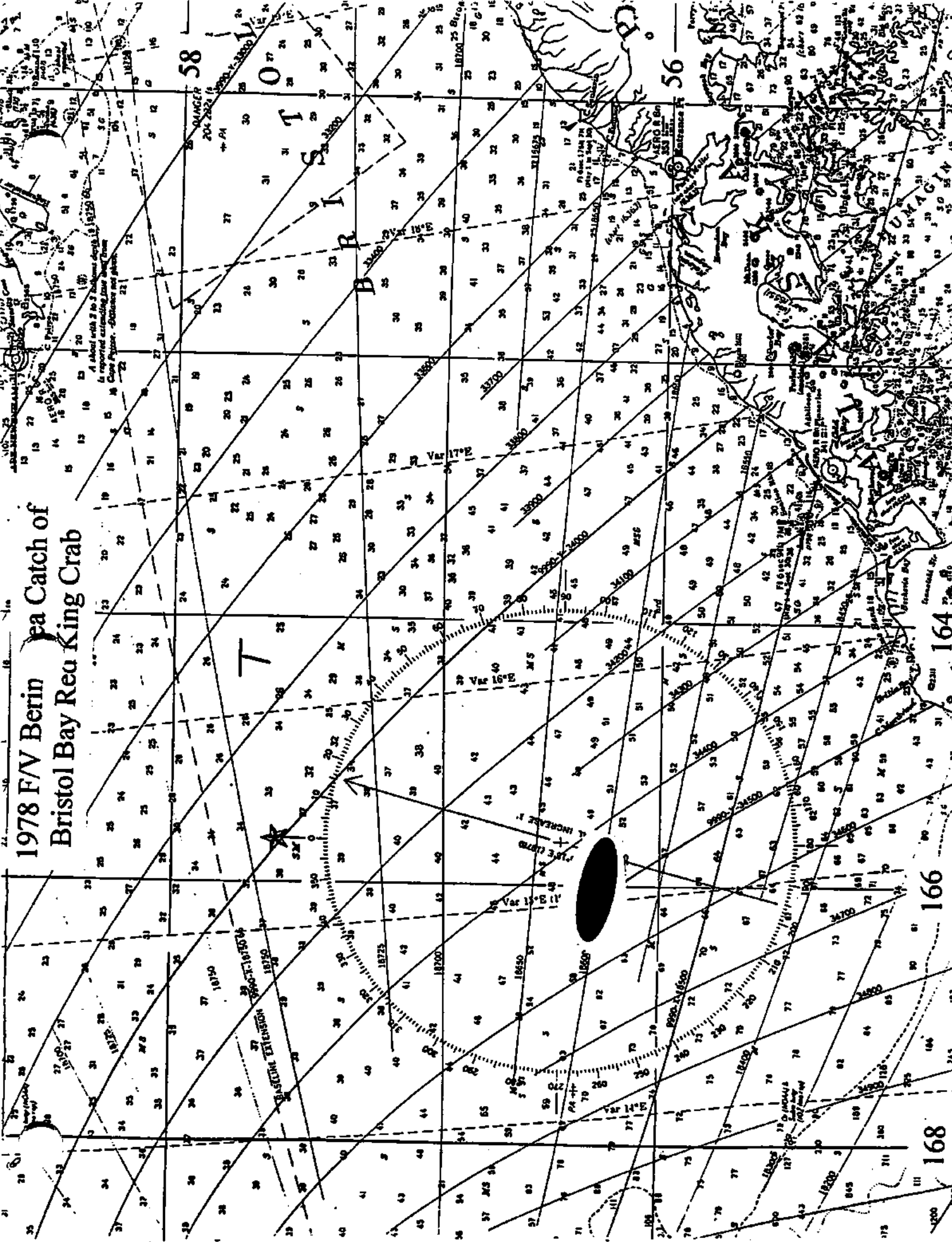
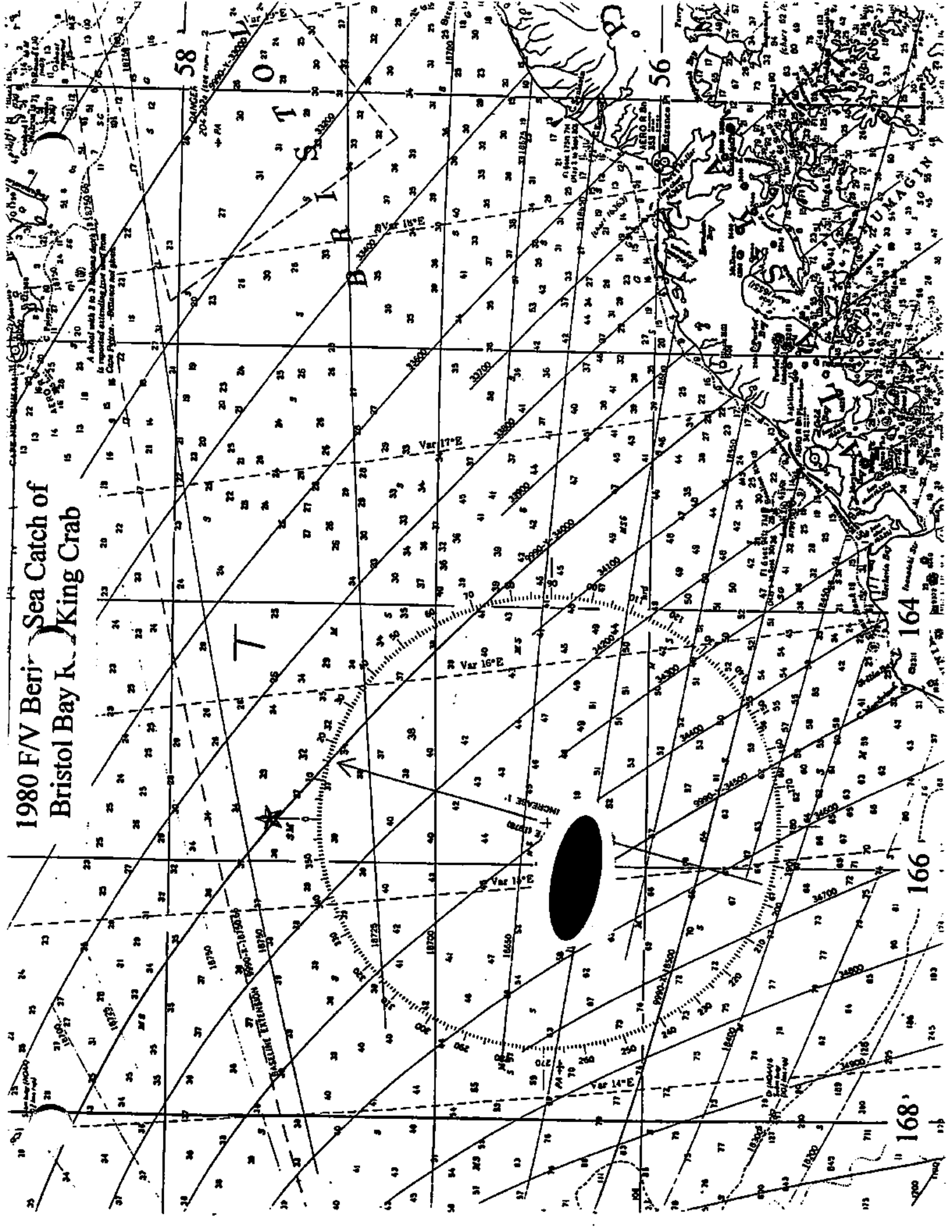


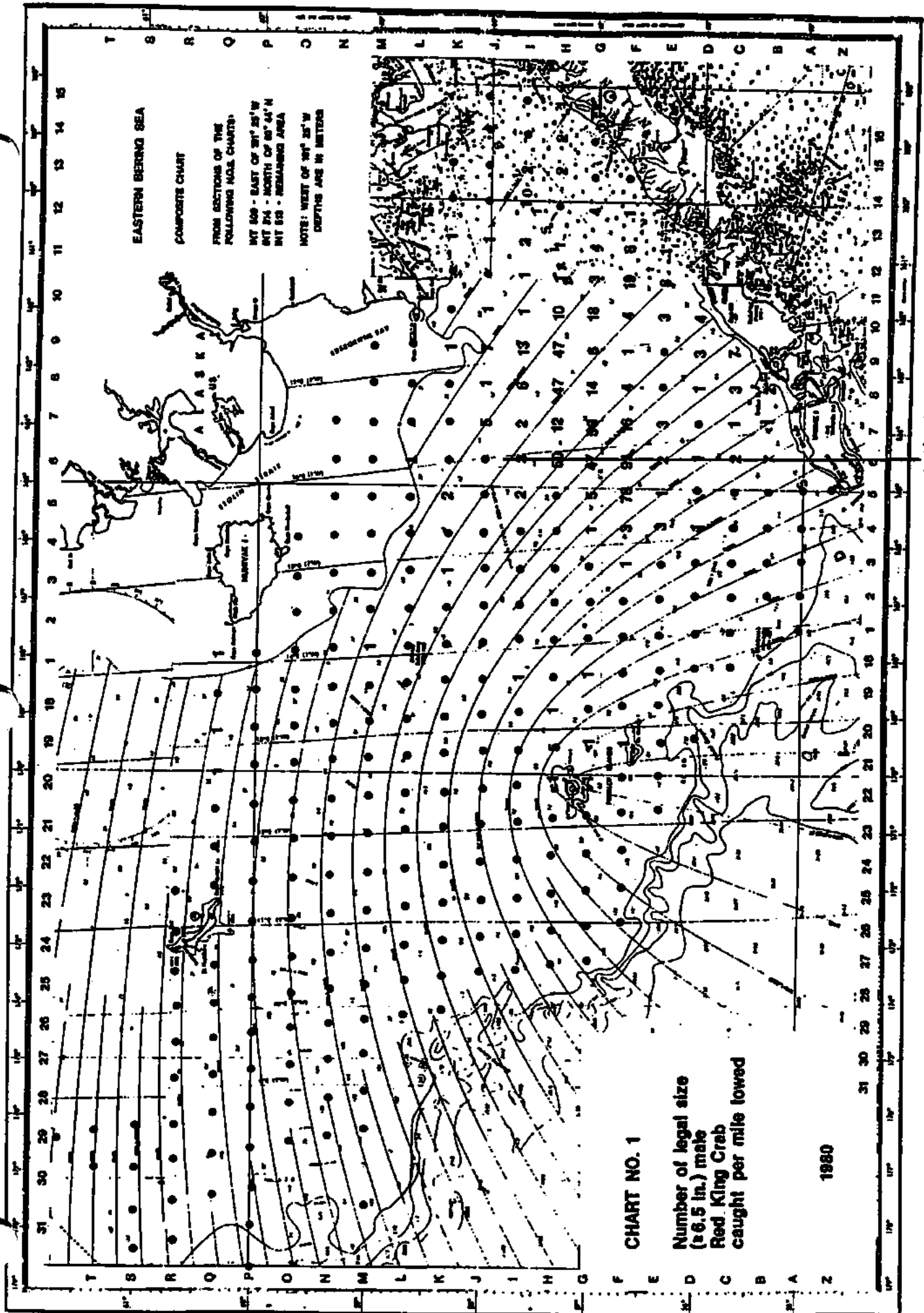
Figure 1. Bristol Bay king crab management area, Registration Area T.

# 1978 F/V Berin Sea Catch of Bristol Bay Red King Crab



# 1980 F/V Berj Sea Catch of Bristol Bay King Crab





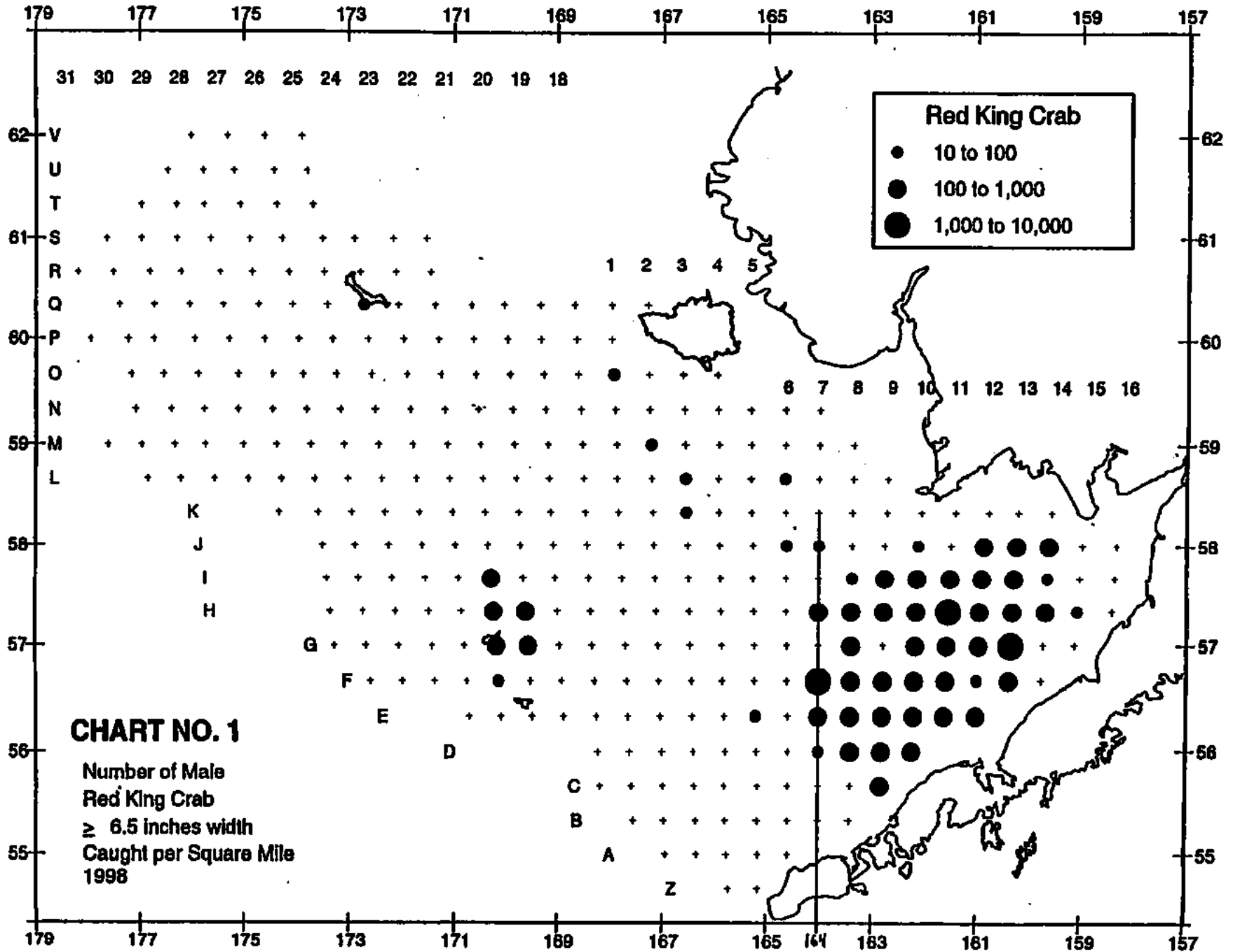
EASTERN BERING SEA  
 COMPOSITE CHART  
 FROM SECTIONS OF THE  
 FOLLOWING NOAA CHARTS:  
 INT 509 - EAST OF 157° 35' W  
 INT 514 - NORTH OF 60° 44' N  
 INT 515 - REMAINING AREA  
 NOTE: WEST OF 157° 35' W  
 DEPTHS ARE IN METERS

CHART NO. 1

Number of legal size  
 (≥ 6.5 in.) male  
 Red King Crab  
 caught per mile towed

1980

164° 40'



## ALASKA CRAB COALITION

3901 Leary Way N.W. Ste. 6

Seattle, Washington 98107


206 547 7560

206 547 0130 Fax

Email: [acc-crabak@msn.com](mailto:acc-crabak@msn.com)

DATE: July 25, 1999

TO: Rick Lauber, Chairman  
North Pacific Fishery Management Council  
Anchorage, Alaska

FROM: Arni Thomson, Executive Director  TOTAL PAGES: 11

RE: **REVISED**  
RECOMMENDATIONS ON 30 DAY TRAWL AND POT GEAR  
EXCLUSION ISSUE, ALASKA BOARD OF FISHERIES

It has recently been brought to our attention that the United Catcher Boats will likely recommend the Board of Fisheries rescind its action on the 30 day gear prohibition in Area T, or modify the area of exclusion in order to allow for shoreside pollock trawlers to fish inside the Catcher Vessel Only Area (CVOA) of Area T. The ACC feels rescission or modification might be a short term solution that enables the trawlers to fish for both pollock and king crab in the fall of 1999, however, it would be a step back wards in the State of Alaska's renewed efforts to improve conservation, management and rebuilding of the king crab resources and it will lead to revisiting the gear exclusion rule in the very near future. The ACC recommends no modification of the area of exclusion, or the 30 day time period for either pot or trawl gear, to deter prospecting. The ACC rationale is noted in this comment and the ACC Comment on Proposals 287, 291, and 355, dated July 12, 1999 recently submitted to the NPFMC..

- *The western portion of the CVOA, an historic king crab harvest area:* From an historical perspective, most of the CVOA (see the attached chartlet) has been at various times, an area of high king crab catches in the 1960s and early 1970s. In the early 1960s, it was the primary harvest area for the developing domestic king crab fishery and the focus of the first Bilateral Agreements between the U.S. and Russia and the U.S. and Japan. (Attachment, letter, Craig Hammond, NMFS AKR, to Arni Thomson, dated 2 20 87). In summary, the original crab "pot sanctuary" was negotiated in 1964 and implemented in 1965 -to close the western portion of Area T and the CVOA, to trawl gear and tangle nets being used by the foreign countries in this area to catch king crab. Under further Bilateral Agreements, the area was expanded to include most of Area T as a non-trawl-fixed gear fishing zone, to protect king and tanner crab resources, and halibut. (Attachments, pot sanctuary and halibut savings area, NMFS). The trawl closure zone was extended west to 170 W. longitude and overlapped with the pot sanctuary to protect juvenile halibut. Thus the entire CVOA was a crab and halibut protection zone. The pot sanctuary was closed year-round to



all trawling, while the halibut savings area was closed to all trawling, December 1 to May 31<sup>st</sup>, until 1981. At that time, these areas were opened under experimental conditions to encourage the development of near shore yellowfin sole joint venture fishing operations. Numerous ACC fishermen have reported their experiences with good king crab fishing west of 166 W. longitude, similar to the experiences noted in the correspondence of Kris Poulsen and Associates, dated July 23, 1999.

- ***Shoreside pollock catches, B season in Statistical Area 509 in 1998:*** I have recently learned from the NMFS that shoreside pollock catcher vessels caught 22,000 mt (50 million pounds) of pollock during the 1998 B season in Statistical Area 509—165 W. to 163 W. during the last week of September and the month of October. This area overlaps with 50% of the "red king crab savings area," the eastern and western boundaries of which are 162 W. and 164 W. longitude. ADF&G notes in its report to the Board of Fisheries on the 1998 Area T king fishery that this is normally the area of highest king crab catches. The NMFS catch information for 509 is new information that was not available at the March Board meeting. (See attached email, Mary Furuness, NMFS AKR, 7 20 99; and NPFMC Bycatch Zones chartlet).

In checking with industry sources, I have further learned that the average size pollock catcher vessels of 110 - 124 ft. LOA, subject to only 30% observer coverage, can pack an estimated 380,000 - 500,000 pounds. This means there could have been almost 100 trips in the area east of 165 W. during the month of October. This presents substantial opportunities for pre-season prospecting. I also enclose a revised list of AFA pollock co-op qualified catcher vessels also qualified to fish for king crab under the Crab LLP (from NPFMC preliminary list). Note that 31 out of 42 vessels are under the 125 ft. LOA, and subject to 30% observer coverage. There are five additional AFA qualified vessels (at the bottom of the list) under 125 ft. LOA that fished Bristol Bay king crab in 1998 with moratorium qualifications that will also be able to fish the 1999 season.

- ***Revision of Steller sea lion protection measures:*** The issue of increasing opportunities for prospecting with pelagic trawl gear in Area T needs also to be viewed within the context of additional recent information regarding Steller sea lion regulations. On July 8, 1999, the United States District Court in Seattle ruled, in essence, that the provisions of the 1999 emergency rule to protect steller sea lions were inadequate, (including the critical habitat provisions, which already restrict pollock harvests in the CVOA portion of Area T), and they must be revised. The emergency rule could be revised as early as August 6<sup>th</sup> of this year, according to the judge's order. If pollock harvests are further restricted in the CVOA, this will likely mean increased fishing in Area T -east of 165 W. during the pollock C season, scheduled to open on September 15<sup>th</sup>. (See ACC draft 1999 Projected Inshore Pollock Season Length, based on the present emergency rule allocations and harvest restrictions, subject to possible revisions in August 1999).



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
P.O. Box 1668  
Juneau, Alaska 99802

February 20, 1987

Mr. Arni Thompson  
Executive Secretary  
Alaska Crab Coalition  
3901 Leary Way N.W.  
Suite #9  
Seattle, WA 98107

Dear Mr. Thompson:

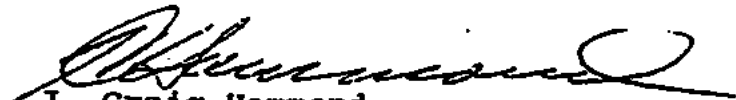
I have reviewed the evolution of the eastern Bering Sea pot zone and have found the following series of events. The original zone came into existence in 1965. The boundaries ran from Cape Sarichef to 55-16N 166-10W, northeastward to 55-28N 165-34W, thence eastward along 55-28N to the Alaska Peninsula. That was a provision of the 1965 U.S./Soviet crab agreement and the U.S./Japan crab agreement concluded in late 1964.

The zone expanded in 1968 when the crab agreements with Japan and the Soviet Union were renegotiated. That change became effective in 1969 and the northern boundary changed from 55-28N to 55-54N.

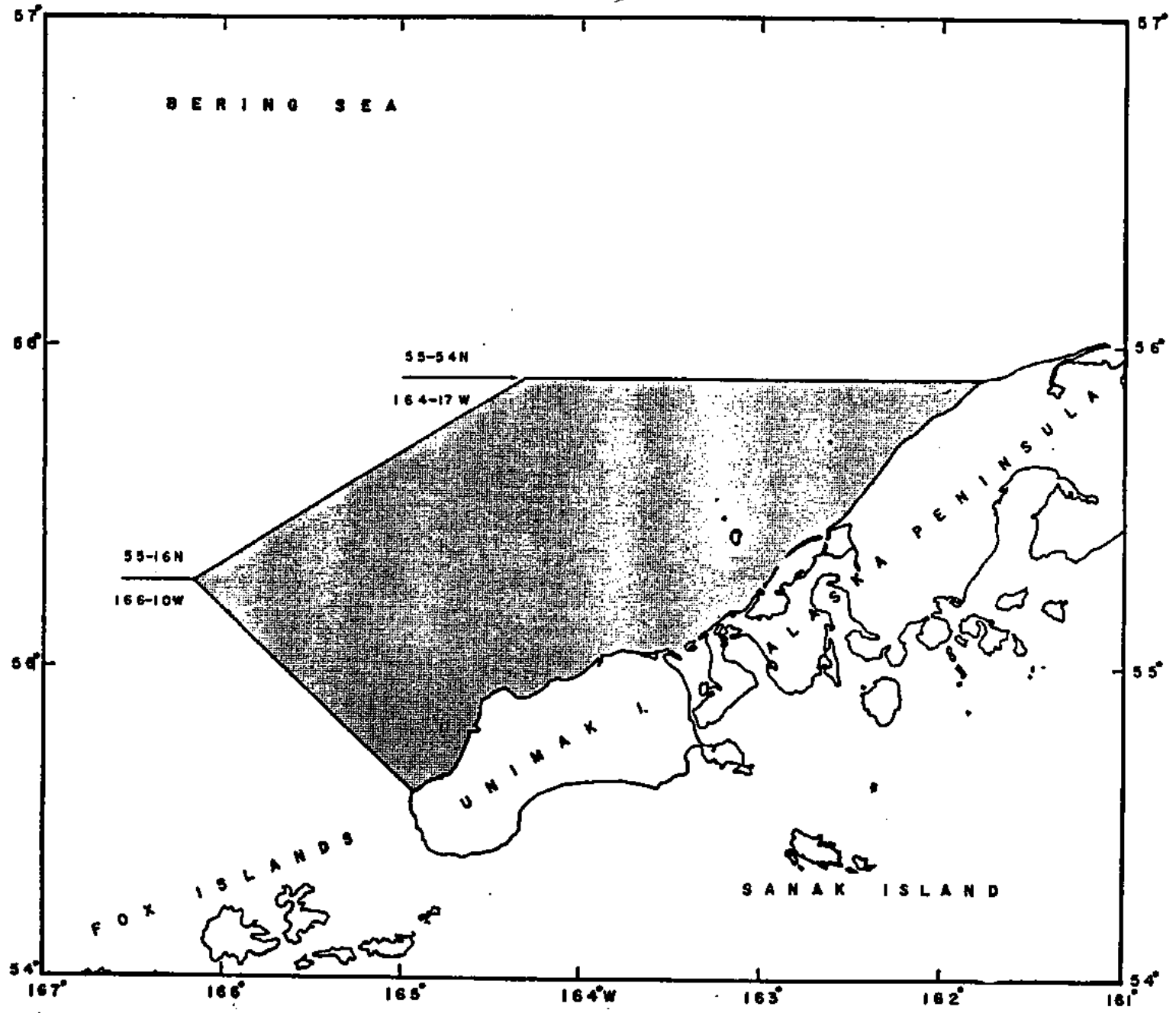
The final change that I have been able to track occurred in 1975 when the U.S./Soviet fisheries agreement expanded the pot zone to its present configuration. The Japanese agreed to the same configuration but implemented it as a domestic regulation through arrangements that had been concluded at INFFC. Several other concessions were gained at that time that closed nearby areas to trawling during winter months. Those final bilateral arrangements were carried forward in the foreign fishing regulations that implemented the Magnuson Act in 1977.

Enclosed are copies of those fishing agreements and a chartlets showing the various pot zones.

Sincerely yours,

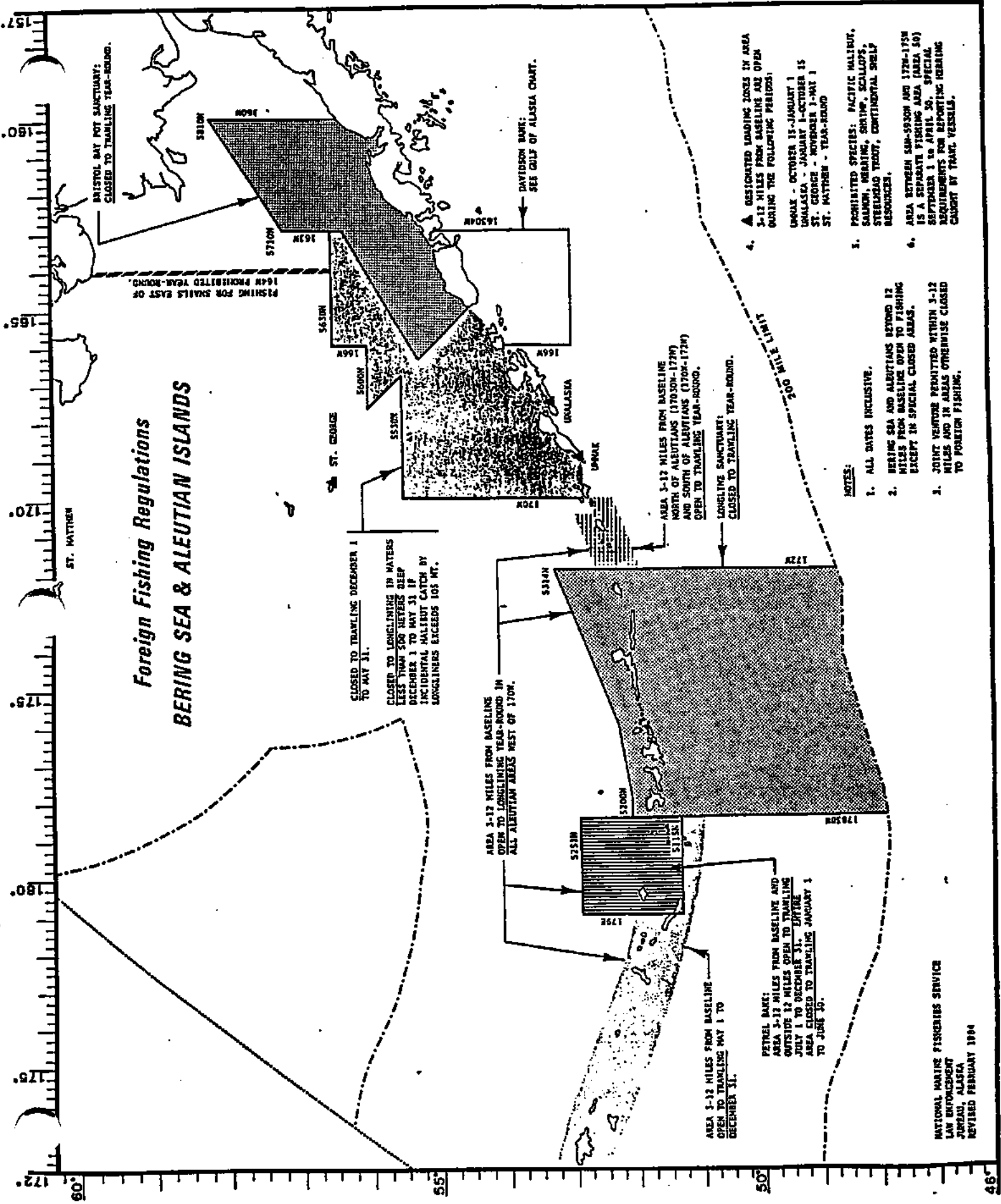
  
J. Craig Hammond  
Special Agent in Charge





Prepared March 1973  
National Marine Fisheries Service  
Juneau, Alaska

# Foreign Fishing Regulations BERING SEA & ALEUTIAN ISLANDS



**BRISTOL BAY FISH SANCTUARY:**  
CLOSED TO TRAWLING YEAR-ROUND.

164M PROHIBITED YEAR-ROUND  
FISHING FOR SKALD EAST OF

5710N  
1623W

5630N  
1634W

5500N  
1650W

5530N  
1670W

5530N  
1700W

5530N  
1730W

5530N  
1750W

5530N  
1790W

5530N  
1800W

5530N  
1830W

CLOSED TO TRAWLING DECEMBER 1  
TO MAY 31.  
CLOSED TO LONGLINING IN WATERS  
LESS THAN 500 METERS DEEP  
DECEMBER 1 TO MAY 31 IF  
INCIDENTAL HALIBUT CATCH BY  
LONGLINERS EXCEEDS 105 MT.

AREA 3-12 MILES FROM BASELINE  
OPEN TO LONGLINING YEAR-ROUND IN  
ALL ALEUTIAN AREAS WEST OF 170W.

AREA 3-12 MILES FROM BASELINE  
NORTH OF ALEUTIANS (17030N-1720N)  
AND SOUTH OF ALEUTIANS (1700N-1720N)  
OPEN TO TRAWLING YEAR-ROUND.

LONGLINE SANCTUARY:  
CLOSED TO TRAWLING YEAR-ROUND.

PETREL BANK:  
AREA 3-12 MILES FROM BASELINE AND  
OUTSIDE 12 MILES OPEN TO TRAWLING  
JULY 1 TO DECEMBER 31. ENTIRE  
AREA CLOSED TO TRAWLING JANUARY 1  
TO JUNE 30.

AREA 3-12 MILES FROM BASELINE  
OPEN TO TRAWLING MAY 1 TO  
DECEMBER 31.

▲ DESIGNATED LOADING ZONES IN AREA  
3-12 MILES FROM BASELINE ARE OPEN  
DURING THE FOLLOWING PERIODS:

- 1. UMSKAL - OCTOBER 15-JANUARY 1
- 2. USKALASKA - JANUARY 1-OCTOBER 15
- 3. ST. GEORGE - NOVEMBER 1-MAY 1
- 4. ST. MATTHEW - YEAR-ROUND

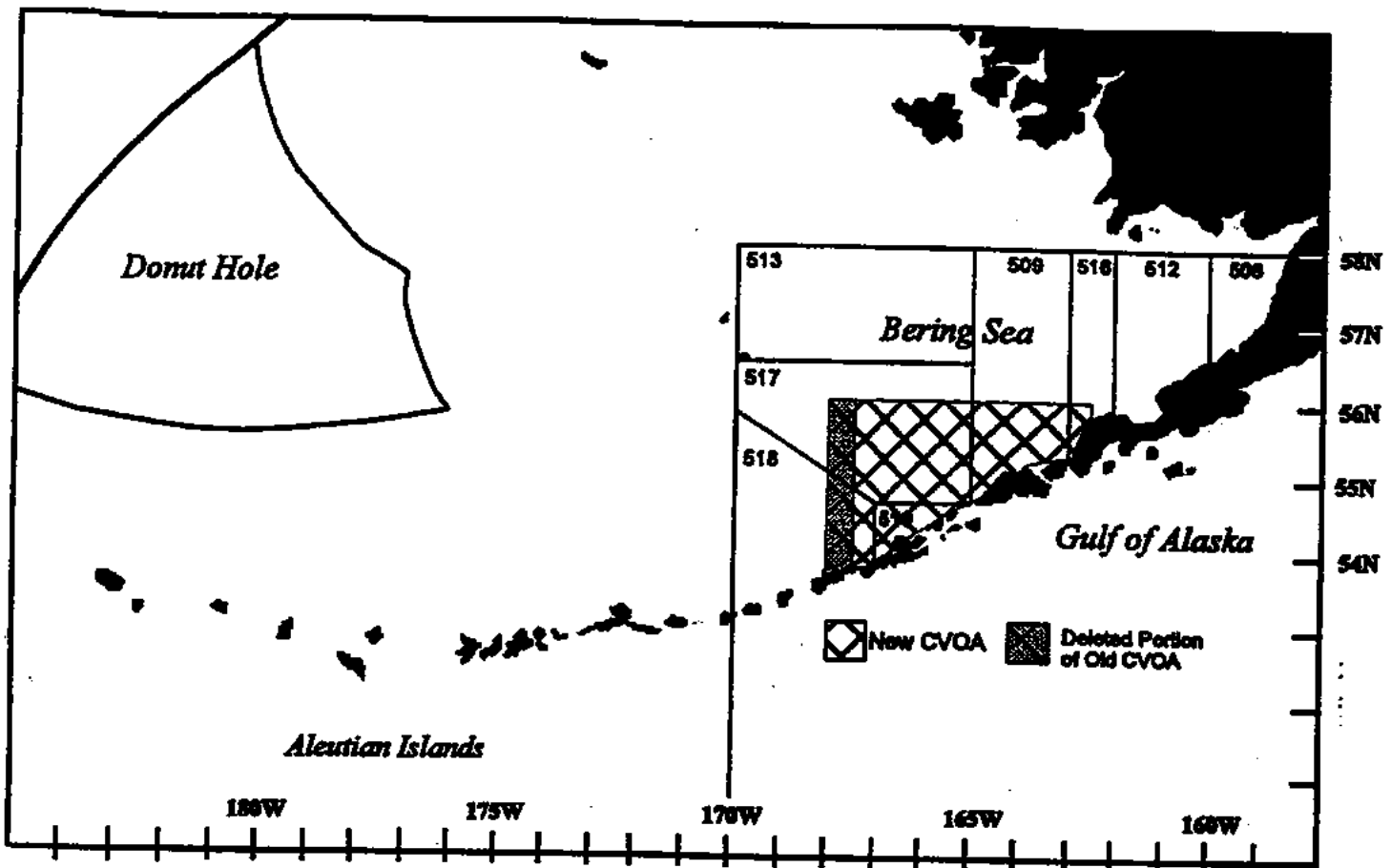
1. PROHIBITED SPECIES: PACIFIC HALIBUT,  
SALMON, HERRING, SHRIMP, SCALLOPS,  
STEELHEAD TROUT, CONTINENTAL SHELL  
RESOURCES.

6. AREA BETWEEN 54M-5530M AND 173M-175M  
IS A SEPARATE FISHING AREA (AREA 50)  
SEPTEMBER 1 to APRIL 30. SPECIAL  
REQUIREMENTS FOR REPORTING HERRING  
CAUGHT BY TRAWL VESSELS.

**NOTES:**

1. ALL DATES INCLUSIVE.
2. HERRING SEA AND ALEUTIANS BEYOND 12  
MILES FROM BASELINE OPEN TO FISHING  
EXCEPT IN SPECIAL CLOSED AREAS.
3. JOINT VENTURE PERMITTED WITHIN 3-12  
MILES AND IN AREAS OTHERWISE CLOSED  
TO POSITION FISHING.

NATIONAL MARINE FISHERIES SERVICE  
LAW ENFORCEMENT  
JURISDICTION, ALASKA  
REVISED FEBRUARY 1994



### Catcher Vessel Operational Area (CVOA)

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**Origin:** Implemented as part of Amendment 18 (inshore/offshore) on June 1, 1992, and revised in June 1995.

**Description of Area:** The offshore component is prohibited from fishing in the CVOA during the pollock "B" season. The CVOA is defined as that area in the Bering Sea subarea south of 56°00' N. latitude, and between 163°00' and 167°30' W. longitude.

**From:** Mary Furuness <Mary.Furuness@noaa.gov>  
**To:** acc-crabak@email.msn.com <acc-crabak@email.msn.com>  
**Date:** Tuesday, July 20, 1999 9:24 AM  
**Subject:** Re:REQUEST FOR 1998 B SEASON SHORESIDE POLLOCK CATCH 509 & 5

---

Arni,

Below is the area 509 data by week. I had to omit about 800 mt, because there was less than 3 processors reporting for those weeks. I couldn't respond to your message last week, I was out of the office. Let me know if you have any questions. Thanks, Mary

TONS ZONE WED  
2,422 509 09/26/98  
11,826 509 10/03/98  
3,700 509 10/10/98  
1,881 509 10/17/98  
1,645 509 10/24/98  
707 509 10/31/98  
22,180

Reply Separator

**Subject:** REQUEST FOR 1998 B SEASON SHORESIDE POLLOCK CATCH 509 & 516  
**Author:** [acc-crabak@email.msn.com](mailto:acc-crabak@email.msn.com)  
**Date:** 7/15/99 3:35 PM

Hi Mary: Could I get that data in weekly catch format. Thank you. Arni

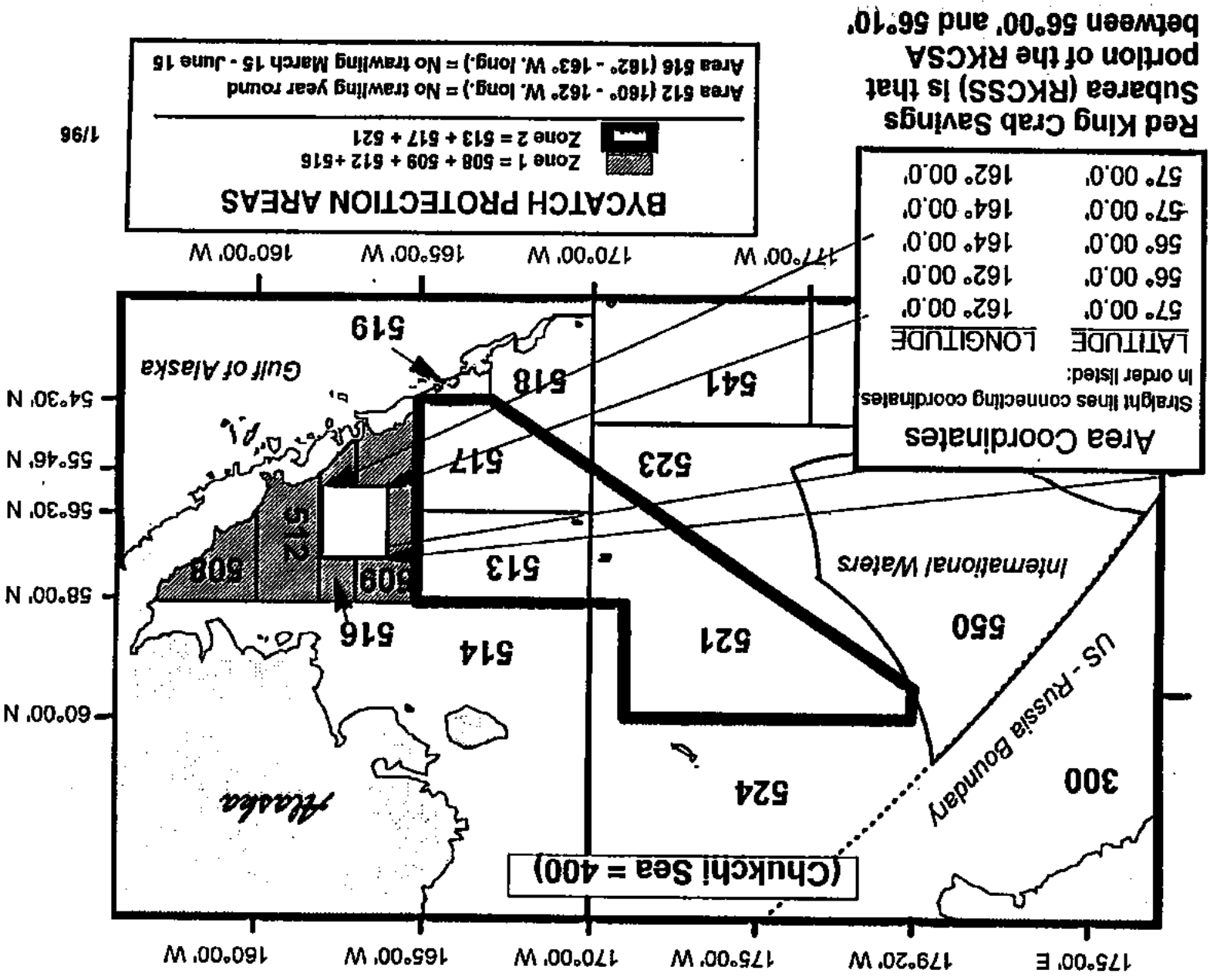


Figure 11. Red King Crab Savings Area (RKCSA)

Red King Crab Savings Subarea (RKCSS) is that portion of the RKCSA between 56°00' and 56°10'

Revised: 7/12/99

**LIST OF BERING SEA AFA COOP-ELIGIBLE POLLOCK/GROUNDFISH TRAWLERS, NPFMC APPROVED,  
ALTERNATIVE #9 FOR THE LICENSE LIMITATION PROGRAM, FOR BERING SEA KING & TANNER CRAB  
FISHERIES. (TOTAL VESSELS: 42)**

VESSEL NAME	ADF&G	LOA	OWNERSHIP INFORMATION	SMALL ENTITIES
AJ	57934	150	Saga Sfds. WA	
ALASKA DAWN (OK alt. 4)	69765	90	William Gilbert AK	Small
ALDEBARAN	48215	132	Trident Sfds. WA	
ALSEA	40749	124	Halls OR	
AMERICAN EAGLE (OK alt. 4)	00039	120	R. Tynes, J. Wabey WA	
ARCTIC WIND	01112	123	Victor Sfds./Aleutian Spray WA	
ARCTURUS	45978	132	Trident Sfds. WA	
ARGOSY (OK alt. 4)	38547	124	Halls OR	
BLUE FOX	62892 or 66039 ?	85	F. Yeck OR	
COMMODORE	53843	133	Victor Sfds., J. Johannesen WA	
DOMINATOR (OK alt. 4)	08668	130	Trident Sfds. WA	
DONA MARTITA (OK alt. 4)	51672	152	Trident Sfds. R. Desautel WA	
ELIZABETH F	14767	90	Brekken/S. Stutes AK	
ENDURANCE	32554	82	Endurance Corp. WA	Small
FIERCE ALLEGIANCE (OK alt. 4)	55111	166	R. Mezich WA	Small
FLYING CLOUD (OK alt. 4)	32473	124	Trident Sfds. WA	
GOLDEN DAWN (CDQ)	35687	149	Trident Sfds., APICDA AK	
GOLDEN PISCES (OK alt. 4)	32817	98	Elmer McNabb OR	Small
GUN MAR	41312	172	G. Ildhuso WA	
LADY JOANNE (OK alt. 4)	62922	58	David Wilson AK	
LISA MARIE (CDQ)	70221	78	YDFDA AK	Exempt
MAJESTY	60650	106	Trident Sfds. WA	
MAR GUN	12110	110	G. Ildhuso (Ocean Phoenix) WA	
MARCY J (OK alt. 4)	00055	97	H. Jones AK	
MARGARET LYN	31672	103	R. Czeisler (Ocean Phoenix) WA	
MARK I	06440	98	C. Garbrick (Ocean Phoenix) WA	
MUIR MILACH	41021	86	D. Fraser WA	Small
NORDIC FURY	00200	93	Hovik/Stone (Ocean Phoenix) WA	
NORDIC STAR	00961	123	Aleutian Spray Fisheries WA	
OCEAN HARVESTOR (OK alt. 4)	00101	108	K. Ness (Trident partner) WA	
OCEANIC	03404	122	E. Langesater (Ocean Phoenix) WA	
PACIFIC FURY	00033	110	M. Stone (Ocean Phoenix) WA	
ROYAL AMERICAN	40840	105	C. Garbrick WA	



SEA STORM	40969	123	Oyang, W. Pereyra	WA
SEA WOLF	35957	143	AK. Boat Co./Wards Cove	WA
SEADAWN	00077	124	F. Yeck	OR
STAR FISH	(OK alt. 4) 00012	123	Aleutian Spray Fisheries	WA
STARLITE	34931	123	Aleutian Spray Fisheries	WA
STARWARD	39197	123	Aleutian Spray Fisheries	WA
STORM PETREL	39860	123	Victor Sfds., J. Johannesen	WA
VESTERAALEN	38342	124	E. Pedersen (Ocean Phoenix)	WA
VIKING EXPLORER	(OK alt. 4) 36045	125	Trident Sfds.	WA

**MAJOR PERMIT HOLDERS: Ocean Phoenix group 7, vessel owners are partners in the mothership; C. Swasand/Aleutian Spray 4; Trident Sfds 9; Victor Sfds./J. Johannesen 3.**  
(Sub Total: 23 of 42)

**ADDITIONAL AFA VESSELS, CURRENT PARTICIPANTS IN CRAB, NOT ALTERNATIVE #9 QUALIFIED IN CRAB: Dona Lilliana, (R. Desautel/Trident); Half Moon Bay, Sunset Bay, (Sultan of Brunei); Poseidon, Royal Atlantic, (J. Johannesen); Vanguard, (V. Hall).**  
(Sub Total: 7)

**1999 Projected Inshore Pollock Season Length**

		<b>% of Total TAC</b>	<b>Metric Tons</b>	<b>Catch Rate</b>	<b>Days Fished</b>
	<b>Total Inshore TAC</b>		<b>423,187</b>		
<b>January 20th</b>	<b>A1/A2 Season</b>				
	<b>Total Catch</b>	<b>40%</b>	<b>171,098</b>		
	<b>TAC Inside CH/CVOA (70% of A TAC)</b>	<b>28%</b>	<b>119,769</b>	<b>4,200</b>	<b>29</b>
	<b>TAC Outside CH/CVOA (30% of A TAC)</b>	<b>12%</b>	<b>51,329</b>	<b>2,100</b>	<b>24</b>
				<b>Total Days</b>	<b>53</b>
	<u><b>Projected Closure of 1999 A Season is March 14th</b></u>				
					<b>Actual Closure was February 28th</b>
<b>August 1st</b>	<b>B Season</b>				
	<b>TAC</b>	<b>25%</b>	<b>105,797</b>		
	<b>TAC Inside CH/CVOA (45% of B TAC)</b>	<b>11%</b>	<b>47,609</b>	<b>3,500</b>	<b>14</b>
	<b>TAC Outside CH/CVOA (55% of B TAC)</b>	<b>14%</b>	<b>58,188</b>	<b>2,200</b>	<b>26</b>
				<b>Total Days</b>	<b>40</b>
	<u><b>Projected Closure of 1999 B Season is September 9th</b></u>				
<b>September 15th</b>	<b>C Season</b>				
	<b>TAC</b>	<b>35%</b>	<b>148,115</b>		
	<b>TAC Inside CH/CVOA (63% of C TAC)</b>	<b>22%</b>	<b>93,313</b>	<b>3,500</b>	<b>27</b>
	<b>TAC Outside CH/CVOA (37% of C TAC)</b>	<b>13%</b>	<b>54,803</b>	<b>2,200</b>	<b>25</b>
				<b>Total Days</b>	<b>52</b>
	<u><b>Projected Closure of 1999 C Season is November 8th</b></u>				