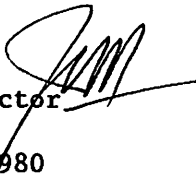


MEMORANDUM

TO: SSC and AP

FROM: Jim H. Branson 
Executive Director

DATE: December 30, 1980

SUBJECT: King Crab Draft FMP

ACTION REQUIRED

None, for informational purposes only.

BACKGROUND

Attached are summaries of Public Testimony received on the Draft King Crab FMP. The entire text of the comments from the North Pacific Fishing Vessel Owners Association is included due to its extensive analysis of various management options. You have already received copies of the Natural Resources Consultants' reports on red king crab size limits.

The SSC subcommittee on king crab will report back to the SSC in February on the Comments received for the King Crab Draft FMP.

SUMMARIES OF WRITTEN COMMENTS RECEIVED ON THE
WESTERN ALASKA KING CRAB DRAFT FISHERY MANAGEMENT PLAN

1. OLAF AASE, 1003 Daley Street
Edmonds, Washington 98020
F/V Sunset

Mr. Aase would like to see the Pot Sanctuary Area closed to all foreign and domestic trawling.

2. LARRY HENDRICKS, 3642 W. Lauston
Seattle, Washington 98199
F/V Sea Star

Mr. Hendricks advocates random pot storage on the fishing grounds. He estimates that random storage could save 840,000 gallons of fuel each season over storage in designated areas of water depth less than 25 fathoms. He calculates the savings thusly:

200 boats x 600 gallons/day x 7 days to transfer
pots to fishing grounds = 840,000 gallons of fuel.

3. ROBERT D. ALVERSON, represented by the Alaska Marketing Association,
Room 232, C-3 Building, Fishermen's Terminal
Seattle, Washington 98119

Mr. Alverson submitted the Natural Resources Consultant's report "An Analysis Of Size Limitation For The Alaska Red King Crab." Copies of the report have been distributed to the Council and the SSC.

4. RICHARD J. GOLDSMITH, Manager, North Pacific Fishery Vessel Owners
Association, Building C-3, Room 218, Fishermen's Terminal
Seattle, Washington 98119

Mr. Goldsmith has submitted extensive comments of the Draft FMP. The entire text will be given to each SSC member.

5. ALVIN R. BURCH, Manager, Alaska Shrimp Trawlers Association
Post Office Box 991
Kodiak, Alaska 99615

Mr. Burch stated that his Association is against random pot storage at sea and that State control of the king crab fishery is preferable. He also stated that two separate management regimes would be acceptable, presumably State management for the Kodiak Fishery and NPFMC management for the Bering Sea/Dutch Harbor fishery.

6. DENNIS PETERSEN, Ocean Spray Fisheries
4315 11th Avenue, N.W.
Seattle, Washington 98107

Mr. Petersen favors implementing a king crab FMP by the Council, a 6.25 in. minimum size limit for Bering Sea crabs and an "increased fishing rate from the .36% range up to a .60% level..." He would also like to see a test fishery before the general opening in order to determine the optimal recovery from the crabs.

NORTH PACIFIC FISHING VESSEL OWNERS ASSOCIATION

Building C-3, Room 218
Fishermen's Terminal
Seattle, Washington 98119
Phone: (206) 285-3383

AGENDA D-2(b)-2
January, 1981

December 6, 1980

COMMENTS

ON

WESTERN ALASKA KING CRAB DRAFT FISHERY MANAGEMENT PLAN

(version of September 15, 1980)

These are the comments of the North Pacific Fishing Vessel Owners' Association (NPFVOA) on the North Pacific Fishery Management Council's plan cited above (referred to below as the Draft FMP or Draft Plan).

With the exception of a few vessel owners from Alaska, California, Oregon, and Idaho, NPFVOA's members are residents of the State of Washington. NPFVOA's members own the majority of vessels that harvest king crab in the Bering Sea; many members also operate their own vessels. The members' vessels are large--all are in excess of 90 feet--and on the average each is valued at over \$2,200,000. The impact of these vessels on the Alaska king crab fishery is well documented; the Draft FMP states:

Three hundred and sixty-eight vessels harvested king crab in Alaskan waters during 1977. Of these, 133 were nonresident vessels, nearly all from Washington. Most of these nonresident vessels fished in the Bering Sea, the most productive area in the state. They accounted for two-thirds of the statewide harvest of king crab¹

(Emphasis added.)

Table 10 of the Draft Plan shows that the ex-vessel value of Alaskan king crab landed by the nonresident fleet in 1977 was \$59,457,000.

It should also be pointed out that NPFVOA's members, through their fishing skills, ingenuity, and foresight, played a large part in developing the Alaska offshore king crab fishery into the highly valuable fishery it is today.

Listed below are the Draft Plan options which NPFVOA supports. Following this summary is the rationale for the Association's (NPFVOA's) choices.

- I. THE NEED FOR A FISHERY MANAGEMENT PLAN (Page 4)
Option 3: Plan implemented by federal regulations

- II. FISHERY MANAGEMENT UNIT (Page 17)
Option 1: Western Gulf of Alaska and Bering Sea
(Note: NPFVOA wants later amendment of the plan to include all waters off Alaska where king crab are found.)

- III. DETERMINATION OF OPTIMUM YIELD (Page 19)
Option 3: Procedural management
(Note: NPFVOA proposes 6.25-inch minimum carapace width for most areas and adjustment of exploitation rate with 0.6 instantaneous rate for the eastern Bering Sea.)

- IV. SEX RESTRICTIONS (Page 25)
Option 1: No commercial harvest of female crabs

V. REGISTRATION AREAS (Page 25)

Option 2: No registration system

(Note: NPFVOA supports registration areas for data collection only; it does not want designation of registration areas as "exclusive" or "nonexclusive.")

VI. POT LIMITS (Page 32)

Option 2: No pot limits

VII. GEAR PLACEMENT (Page 34)

Option 1: Maintain status quo

(Note: This option must be made compatible with gear storage on the fishing grounds.)

VIII. GEAR STORAGE (Page 34)

Option 3: Pot storage on the fishing grounds

IX. VESSEL TANK INSPECTION (Page 38)

Option 1: Inspection following opening of Bering Sea

X. LIMITED ENTRY (Page 38)

Option 3: Reject limited entry

XI. PERMIT REQUIREMENTS (Page 42)

Only a federal license shall be required for fishing in the Fishery Conservation Zone.

XII. REPORTING REQUIREMENTS (Page 46)

Data required by the Draft Plan shall be provided to the Secretary of Commerce by fish buyers and processors, including catcher-processor vessels.

I. THE NEED FOR A FISHERY MANAGEMENT PLAN

Careful analysis of the Fishery Conservation and Management Act of 1976 (FCMA),² its legislative history,³ and the National Oceanic and Atmospheric Administration (NOAA) regulations⁴ that implement the provisions of the FCMA, leads to the inescapable conclusion that the Council is required to prepare a King Crab Fishery Management Plan (King Crab FMP) which must be implemented by federal regulations (Option 3).

Section 302(h) of the FCMA, which sets forth the functions of Regional Fishery Management Councils, requires each Council to prepare and submit to the Secretary [of Commerce] a fishery management plan with respect to each fishery within its geographical area of authority⁵

(Emphasis added.)

The requirement that the Council prepare a King Crab FMP is also based on Section 2(b)(4) of the FCMA, which declares that one of the purposes of Congress in enacting this statute is

to provide for the preparation and implementation ... of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery[.]⁶

(Emphasis added.)

In addition, the NOAA regulations implementing the FCMA⁷ and the Conference Committee report⁸ that accompanied the FCMA when it was presented to the Congress for passage support this position.

The North Pacific Council has also publicly taken a position that FMPs are to be prepared for every fishery. In response to the question, "Should Executive Order 12044 continue to be applicable to the preparation of fishery management plans?" posed by the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, Council Chairman Clement V. Tillion submitted a written statement which said:

The requirement [for an approved work plan prior to starting on a FMP] seems unnecessary and contrary to the FCMA, which mandates the development of fishery management plans by the Council for every fishery within its jurisdiction.⁹

(Emphasis added.)

Alaska lacks authority to manage in FCZ

There are no legal foundations to support the other two options proposed in the Draft FMP. Under Option 1 (No plan) the Council after public hearings would assess:

- a. The need for Federal management of a fishery which is entirely offshore, managed by a single state, which has no foreign fishery, and for which a regulatory regime is currently in effect.
- b. Duplicating the current state's regulatory, management, and enforcement regime is desirable given National Standard 7; and
- c. The ability of the State to manage all segments of the Fishery.¹⁰ [sic]

This option states that the fishery is "entirely offshore." This phrase is not defined, but it is presumed to mean that the entire fishery takes place outside of state waters, that is, beyond three nautical miles from the coast of Alaska. An "entirely offshore" fishery brings into question the ability (legal authority) of Alaska to regulate fishing in the Fishery Conservation Zone (FCZ).

As a general statement, it can be said that in the Submerged Lands Act¹¹ the United States, with some reservations of rights and powers, gave to the state title and ownership of the lands from the state's coastline out to three nautical miles. Included in this grant was the authority to manage "natural resources," a term which encompassed fish and crabs. However, the natural resources of the Continental Shelf beyond this three-mile area still belonged to, and were under the jurisdiction and control of, the United States. (The Submerged Lands Act was applied to Alaska when it was admitted into the Union in 1959.¹²)

The Senate and House debates and the committee reports preceding the passage of the FCMA clearly demonstrate that Congress was aware of the lack of state regulatory power over fisheries beyond three miles.¹³ In the FCMA, Congress generally retained the division of authority established in the Submerged Lands Act. The FCMA set up the FCZ; the "Alaska" portion can be described as being between three and two hundred miles off the state's coast.¹⁴ All "fish" (which includes king crab) within the FCZ and all "Continental Shelf fishery resources" (including king crab) beyond the FCZ are subject to the exclusive fishery management authority of the United States.¹⁵ To indicate

that state authority over fisheries within three miles would remain undisturbed (unless state management adversely affects fishery management in the FCZ), Section 306(a) of the FCMA declares in part:

Except as provided in subsection (b)
[when state management adversely affects
federal management in the FCZ], nothing
in this Act shall be construed as extending
or diminishing the jurisdiction or authority
of any State within its boundaries.¹⁶
(Emphasis added.)

Curiously, Congress did give a state authority to regulate some vessels fishing outside of state waters. Section 306(a) also states:

No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

The FCMA does not define "registered under the laws of such State." The United States Supreme Court has allowed a state, in certain instances, to regulate the fishing activities of its own citizens beyond state waters.¹⁷ Therefore it is reasonable to infer that a state could still regulate its residents in the FCZ.

However, the State of Alaska, in an interesting gambit after the passage of the FCMA, revised its statutes and administrative code to provide a definition of "registered under the laws of such State." Section 16.05.475 of the Alaska Statutes declares it unlawful "to employ a fishing vessel in the water of Alaska unless it is registered under the laws of the state." Vessels registered in another state and nonresidents are not excused

from this provision. This section of the Alaska Statutes also empowers the Board of Fisheries to define "registered under the laws of the state" in any way necessary "to maximize the authority of the state to apply and enforce fisheries regulations under the ...[FCMA]." ¹⁸ Alaska's Board of Fisheries has dictated that obtaining an Alaska commercial fishing license and an interim-use permit for the areas where the vessel is to fish constitutes "registered under the laws of the State" for the king crab fishery. ¹⁹

Alaska's interpretation of "registered under the laws of such State" as encompassing nonresident vessels is totally contrary to the declarations of authority in the FCMA and the Submerged Lands Act. If a state can manage residents and nonresidents fishing beyond its boundaries, why did Congress give the federal government "exclusive fishery management authority" in the FCZ? Moreover, NPFVOA knows of no federal court decision where a state has been able to regulate nonresidents fishing beyond state boundaries. NPFVOA believes that Alaska can regulate fishing by only its citizens in the FCZ. If this is true, Alaska has no authority to regulate nonresident vessels now fishing for king crab in the FCZ.

Should the Council fail to adopt a King Crab Plan which would be implemented by federal regulations, nonresident vessels in the FCZ could legally choose to ignore Alaska's regulations; the result would be an uncontrolled harvest of king crab. This is a situation no one wants.

A federal regime is necessary

Under Option 1 the Council would also assess the "need for Federal management." As indicated above, plans must be prepared for every fishery under Council jurisdiction. The FCMA does not make "need" a condition of Council plan development, even though H.R. 200 and S. 961 (the legislative forerunners of the FCMA) either expressly or implicitly made "the need for conservation and management" a criterion for the preparation of a FMP.²⁰

If, for the sake of argument, "need" is to be considered before a plan is developed, this criterion is already satisfied. The institution of a regulatory scheme for king crab by Alaska and the tenacity of the state in trying to retain management authority over this resource both demonstrate that this fishery needs to be managed. Coupling these factors with Alaska's lack of jurisdiction over nonresidents in the FCZ, enough "evidence" has been shown that a Council plan is necessary.

A plan does not mean duplication

The third factor to be assessed under Option 1 is whether duplication of the state's management regime is desirable under National Standard 7 of the FCMA. This standard says:

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.²¹

(Emphasis added.)

This factor, as it is stated in the Draft Plan, almost seems to assume that, if a federal plan is adopted, it will incorporate all of Alaska's management measures. NPFVOA, as it will point out in these comments, believes that many of Alaska's regulations are not consistent with the national standards of the FCMA. Thus federal implementation of a Council-prepared FMP would not be unnecessary duplication of the state's regulatory and management regime. Unnecessary enforcement duplication can be eliminated and costs can be minimized by resorting to Section 311(a) of the FCMA, which enables the Secretary by agreement to use Alaska's personnel, services, equipment, and facilities to enforce federal regulations.²²

The Secretary must implement a FMP

The final proposal by the Council, a federal FMP with state implementation (Option 2), also is not legally possible under the FCMA. Section 302(h) of the FCMA requires that the Council prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority²³

(Emphasis added.)

Section 305(a) states that, once the FMP is approved by the Secretary,

the Secretary shall publish in the Federal Register ... any regulations which he proposes to promulgate to implement such plan²⁴

Furthermore, Section 305(c)²⁵ mandates that the Secretary

promulgate regulations (1) after considering public comments received on the proposed regulations, and (2) upon finding the plan to be consistent with the FCMA's national standards and its other provisions and other relevant laws. The FCMA also gives the Secretary a general responsibility to carry out approved FMPs by promulgating regulations in accordance with the federal Administrative Procedures Act.²⁶

Clearly, the FCMA makes the promulgation of regulations to implement an approved FMP the responsibility of the federal government, not the state. It should be stressed that there is no provision in the FCMA for the federal government to delegate this authority to the state. In addition, state implementation of a FMP would be of little management value, since Alaska's ability to regulate nonresident fishing beyond its boundaries is questionable, as explained above.

Options 1 and 2 subvert Congressional intent

The selection of Option 1 or 2 also raises serious questions regarding subversion of the Congressional intent for a national program responsive to regional concerns, an intent embodied in the FCMA. Congress found that a national program for fishery conservation and management is

necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.²⁷

Congress also determined that:

A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.²⁸

(Emphasis added.)

When Congress was in the process of creating a national fisheries program, exemptions to allow continued state management were proposed for Alaska and other states which had strong regulatory regimes. These proposals were rejected. During consideration of S. 961, Senator Gravel of Alaska tried to introduce an amendment to enable Alaska to continue management of the resources beyond its boundaries. His attempt was thwarted by Senator Magnuson of Washington, who noted: "This is not just a bill for Alaska. This is a bill for all the other States."²⁹

While H.R. 200 was being debated, Representative Leggett of California on the floor of the House responded to a letter from the attorney general of California. The attorney general was arguing for state jurisdiction beyond three miles when a state has a legitimate interest in the extraterritorial resource. Representative Leggett said (of California's managing extraterritorial shrimp beds):

There is no reason to believe that proper professional, scientifically based management ... cannot be carried out by Federal officials in cooperation with professional State officials and biologists as they have been by State people

alone.... But to seek to legislatively provide for continued State jurisdiction beyond State waters would be asking for a spate of similar exceptions by other States and would be unnecessarily confusing.³⁰

The concept of a national program based on national standards to preserve the fisheries is advanced by neither Option 1 nor Option 2. However, NPFVOA's opposition to these proposals should not be perceived as a total rejection of Alaska's participation in the management of the king crab fishery. The FCMA allows Council FMPs to

incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery.³¹

NPFVOA strongly supports fisheries management coordinated between the federal government and the State of Alaska, but a coordinated regime that is sanctioned by federal law and comports with the national standards enumerated in the FCMA. NPFVOA agrees with the House Committee on Merchant Marine and Fisheries that

the critically needed conservation and management of our fish stocks cannot be obtained without improved coordination and integration of the respective State and Federal roles.³²

Adoption of either Option 1 or Option 2 also does not guarantee that regional concerns will be considered. One of the purposes of this Act is

to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States³³

(Emphasis added.)

Moreover, Congressional policy enunciated in the FCMA is

to assure that the national fishery conservation and management program ... is responsive to the needs of, interested and affected States and citizens³⁴

(Emphasis added.)

Meaningful participation by nonresidents in the management of the Alaska king crab fishery is not possible under current management practices. Although nonresidents may submit management proposals to the (Alaska) Board of Fisheries, there is no realistic expectation that the Board will be attentive to the concerns of out-of-state fishermen, even though these fishermen accounted for two-thirds of the statewide harvest of king crab in 1977.³⁵

Members of the Board and personnel of the Alaska Department of Fish and Game are residents of the state; their constituency and employers are the citizens of Alaska. These fishery managers are expected to be more responsive to residents' interests. An example of this was the designation of Dutch Harbor as an "exclusive" registration area. This designation was proposed by a few local fishermen; it was implemented over the protest of the nonresident fishermen who comprised the great majority of the crab harvesters in the area.

Procedures established by the FCMA and other federal laws help ensure that nonresidents will be able to participate actively in the management of the king crab fishery off Alaska. The Council has voting members who are not from Alaska,³⁶ and those people "most affected by, or interested in," Council matters have an opportunity to serve on the Council's advisory panel.³⁷ The public hearing process under the FCMA also allows "all interested persons an opportunity to be heard in the development of fishery management plans ... and with respect to the administration and implementation of ... [the] Act."³⁸ Even after the Secretary approves a plan, the public has an opportunity to comment on the plan and on the regulations which the Secretary proposes to implement the plan.³⁹ Actions taken by the Council and by NOAA must be justified to the public: an environmental-impact statement, required by the National Environmental Policy Act,⁴⁰ and a regulatory analysis, mandated by Executive Order 12044, detail the reasons for selecting one management option over another. When NOAA publishes the final regulations to implement the FMP, it is required to respond to public comments on the plan and the regulations.⁴¹ In Alaska, on the other hand, regulations are published without explanation.

If a person wishes to go to court to challenge an action of the Council or of the Secretary of Commerce, the federal district courts are available.⁴² To challenge Alaska regulations, a nonresident must generally bring a suit in the Alaska state court system.

The patchwork of state fisheries management which prevailed before enactment of the FCMA did not take into account the transboundary nature of the resources nor the interests of nonresidents. The FCMA created Regional Councils to manage fisheries on a regional basis and established procedures which take into account the interests of many states and their fishermen. It should be emphasized that the FMPs prepared by the Councils not only offer a long-range blueprint for management and conservation of the fishery resources, but also enable the fishing industry to engage in economic planning for the harvesting, processing, and marketing of fish. FMPs offer the promise of economic and resource stability in the fisheries. Parochial management, as contemplated in Options 1 and 2, should not be countenanced.

This Council should be aware that the fishing industry and Regional Councils throughout the nation are carefully following the North Pacific Council's actions with respect to the Draft FMP. The national program constructed by Congress in the FCMA was specifically designed for fisheries such as king crab: an extremely valuable offshore fishery conducted by the residents of many states. This Council's not adopting a King Crab FMP would shake the foundations of the FCMA and set a dangerous precedent which could shatter the concept of regional fishery management. If the North Pacific Council fails to act now, and this inaction is condoned by the National Marine Fisheries Service (NMFS), other Councils may try to follow suit, pointing to this Council's and NMFS's actions in the king crab fishery as the model for their "rebellion."

II. FISHERY MANAGEMENT UNIT

NPFVOA favors Option 1, a fishery management unit that encompasses the western Gulf of Alaska and the Bering Sea (as illustrated by Figure 2 on Page 4 of the Draft Plan). Although the FMP indicates that adult king crab "belong to discrete stocks rather than one population,"⁴³ National Standard 3 in the FCMA requires:

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.⁴⁴

The NOAA regulations implementing the FCMA note that

a [management] unit should, to the extent practicable, comprise several stocks that are ecologically interrelated or are affected as a group by fishing practices. Management units may be broadly defined to take account of the multitude of fishing practices that can include effort directed toward: ...

(ii) different stocks of fish caught by the same vessels or gear; (iii) all the stocks in a certain area, and so on.⁴⁵

Because of both the fishing and the economic interrelationships between the Bering Sea and the western Gulf of Alaska, Option 1 is preferable to Option 2, which limits the fishery management unit to the Bering Sea.

The Draft Plan states that the areas of southeastern Alaska, Prince William Sound, and Cook Inlet "do not have a king crab fishery beyond the territorial sea"⁴⁶ In addition, that part of the FCZ that lies off these areas contains "no known

harvestable resource, and a formal fishery management plan for this portion of the FCZ is unnecessary."⁴⁷ The Association contends that exploration of these areas has been inhibited by their designation as "exclusive registration areas" and by their small quotas which are harvested by the inshore fisheries. Offshore fishing in these areas may disclose an abundance of king crab, in which case the resource should eventually be included in the King Crab FMP.

At a future time, NPFVOA would like to see the fishery management unit expanded to include all the waters off Alaska where king crabs are found. This unit would encompass state waters, the FCZ, and, if there is substantial migration of king crabs between the FCZ and the area beyond, those waters too. It should be emphasized that the FCMA proclaims exclusive United States fishery management authority over "[a]ll Continental Shelf fishery resources [which include red, blue, and golden king crab] beyond the fishery conservation zone."⁴⁸

Section 5.0 of the Draft FMP fails to describe adequately the inshore and offshore distributions and relationships of the three varieties of king crab; however, more complete discussions can be included in the plan later. It is probable that these descriptions would give further support for expansion of the fishery management unit.

Enlargement of the fishery management unit to include the inshore waters of Alaska should not be viewed as a federal incursion into the dominion of the state. An expanded management unit would enable the Council to ascertain the effects of its conservation and management decisions on the entire resource

and fishery, not just on the FCZ portions. Thus a framework would be established for more informed and reasoned regulation. It should also be emphasized that an all-encompassing management unit does not portend federal regulation of the inshore fishery: the Secretary of Commerce cannot promulgate regulations for state waters unless the fishing takes place predominantly in the FCZ and beyond, and state action (or inaction) will "substantially and adversely affect the carrying out of ... [a] fishery management plan."⁴⁹

III. DETERMINATION OF OPTIMUM YIELD

Procedural management (Option 3) is favored by NPFVOA. However, NPFVOA proposes a minimum carapace width of 6.25 inches for most areas, and adjustment of the exploitation rate. During low population levels, altering the exploitation rate rather than adjusting the size would be NPFVOA's preferred method of protecting the reproductive potential of the stocks. For the eastern Bering Sea, given the present stock sizes, the exploitation rate should not be less than 0.6 (instantaneous). This rate means that 45 percent of the crabs that are 6.25 inches and larger would be harvested annually.

NPFVOA's recommendations are based on An Analysis of Size Limitation for the Alaska Red King Crab, a study prepared for NPFVOA and the Alaska Marketing Association by Dr. Dayton L. Alverson of Natural Resources Consultants (NRC); it was also funded by Ursin Seafoods, Inc., of Kodiak. On November 4, 1980, the NRC study was submitted to the North Pacific Council to give

Council members ample opportunity to evaluate the data and conclusions before public hearings on the Draft FMP. The analysis should be considered as part of NPFVOA's comments on the Draft FMP. However, a summary of the highlights of the study follows.

In compiling the study, NRC analyzed the data contained and referenced in the Draft Plan. The study consists of a review of the biological information on which a size limit could be based, an evaluation of the growth and mortality of red king crab, an analysis of yield-per-recruit relationships, an examination of spawner-recruit relationships and reproductive behavior, and a review of other biological information influencing size regulations. In reaching its conclusions on a harvest and management strategy, the study also took into account vessel operating factors such as fuel costs and sorting mortality.

The size limit and exploitation rate proposed by the NRC study and endorsed by NPFVOA are an adjustment of the approach proposed by the works of Reeves and Marasco,⁵⁰ which form the basis of Option 3. The minimum carapace width of 6.25 inches and the exploitation rate for the Bering Sea would

- (1) substantially increase the yield per exploitable biomass;
- (2) provide an adequate number of males to maintain a high reproductive potential;
- (3) increase average catch per unit of effort;
- (4) reduce sorting mortality;
- (5) decrease energy demands (fuel costs); and
- (6) minimize population fluctuation by including a broader spectrum of year classes in the fishery, thus increasing the stability of harvests from year to year.

Size and season management is unacceptable

Option 1 (Size and Seasons) is unacceptable for a number of reasons, both stated and unstated in the Draft FMP. The Draft Plan warns that Option 1 makes the fishery dependent on a single year class and describes its possible consequences.⁵¹ The risk which Option 1 poses to the reproductive potential of the stocks when population levels are depressed is also pointed out in the Draft FMP.⁵² Although this option supposedly "maximizes the domestic harvesting capacity without requiring additional vessels,"⁵³ the Draft Plan fails to mention that promises of a longer season and no quotas would probably entice new vessels into the fishery.

For the reasons outlined in NPFVOA's discussion of Option 2 (below), the 6.5-inch-minimum size limit proposed by Option 1 is also objectionable.

Current size limits should be changed

The NRC study, which analyzes Option 2 (Multiple age-class management) in depth, sets forth NPFVOA's rationale for opposing Option 2 and should be referred to. However, some major points of the NRC study are summarized here.

In Section 7.3 of the Draft FMP it is stated:

Size limits limits are established [by the State of Alaska] to ensure that fishing mortality is not allowed on any year class

until that class approaches maximum biomass.
... This serves to maximize the total yield
from each year class.⁵⁴

However, the NRC study points out:

The [State of Alaska management] goal as stated is somewhat confusing and at odds with the commonly held view that maximizing yields from a cohort generally requires (depending on the fishing mortality imposed) that fishing be initiated on a year class substantially before the year class maximizes its biomass. How long before depends on the fishing mortality imposed.⁵⁵

NPFVOA also wonders whether Option 2 would comport with the Draft FMP objective of full use of the resource by the domestic fishery.

The NRC study states that under current fishing practices (adopted by Option 2) about 30-40 percent of the maximum potential harvest in the Bering Sea is lost.⁵⁶ "Applying the most conservative analysis," the study continues, "a near doubling of the fishing rate is required to maximize the yield in the bering [sic] Sea with a 6.5 inch size limit."⁵⁷ The NRC study indicates that fishermen in the Kodiak area forgo 35-40 percent of the potential yield because of regulations now in effect; an annual harvest rate of 76 percent for crabs over seven inches would be necessary to maximize yield per recruit.⁵⁸

The NRC study suggests that substantial increases in yield can be achieved by reducing size limits or increasing harvesting.⁵⁹ Harvesting based on a yield-per-recruit analysis could increase annual landings in the Bering Sea by 24-32 million pounds, and by five million pounds in the Kodiak area.⁶⁰

The NRC study also emphasizes that "the value of a size limit greater than 6 inches and a relatively low harvest rate seems highly questionable," given that (1) male king crabs are polygamous; (2) there seems to be an excess of mature males over females in the exploited population; (3) the spawner-recruit data available suggest that large recruitment has generally come from medium-to-low population sizes; and (4) different mortality rates between the sexes produces a natural surplus of males.⁶¹

Option 2 also poses the strategy of a second fishing period to increase fishing mortality on larger, older crabs. According to NRC, this strategy raises biological concerns. Larger size limits require increased sorting on the grounds and result in mortality to younger crabs. In addition, from a yield-per-recruit standpoint, the crabs can be more effectively used by applying the same harvest rate in one season and adopting smaller size limits.⁶²

Option 2 is not fuel-efficient

Another consideration which argues against the selection of multiple-class management is that this option is not the most fuel-efficient method of harvesting. In a recent letter to all chairmen of the Regional Fishery Management Councils, Terry L. Leitzell, Assistant Administrator for Fisheries, NOAA, noted that there are

several factors which have assumed considerably greater importance in the determination of

appropriate management measures to be included in fishery management plans ... than they had when the interim guidelines [50 CFR Parts 601 and 602] were published.

The first of these is fuel supply and costs. ... The impact of management measures on fishermen's use of fuel should ... be analyzed.⁶³

The NRC study declares that, with high size limits, fewer year classes are involved, and the fishing rate must be substantially increased to maximize the potential yield. As the size limit approaches the critical size (the size at which a cohort's weight is at its peak), it becomes increasingly difficult to harvest the crab without much greater effort. Thus "fuel requirements per unit of effort increase while the average catch per unit of effort decreases."⁶⁴

NPFVOA also is opposed to incorporating the State of Alaska's current seasons, size limits, and exploitation rates in the FMP. Assuming that the Council wishes to adopt a "framework" FMP, specification of all three elements in the plan would negate any promise of flexibility which a framework document would offer: changes of size, seasons, and exploitation rates would have to be implemented by amending the FMP, not altering the regulations.

IV. SEX RESTRICTIONS

NPFVOA favors Option 1 (Banning the harvest of female king crabs). By harvesting spawners, there is a possibility of harming the reproductive potential of the stocks. Because of segregation of the sexes, fishing on females would probably result in an inshore fishery for females. Fishing on females could also result in a high handling mortality because of their generally smaller size. Due to the economics of processing, there is also a question whether processors would want females, which have less recoverable meat than their male counterparts.⁶⁵

V. REGISTRATION AREAS

NPFVOA favors Option 2 (No registration areas) with certain conditions. As the FMP notes, area registration and landing crab within a registration area "greatly enhance the management capability of the Department by making it possible to accurately monitor the total catch and catch rate in individual areas."⁶⁵ The Association knows that accurate data is necessary for good management and the ultimate protection of the resource and the fishery; it wishes to see these data-collection procedures continued. What NPFVOA objects to is the designation of areas as "exclusive" and "nonexclusive," which limits fleet mobility and stifles competition among vessels.

Exclusive areas are economic allocations

Inclusion of Option 1 (Maintaining the status quo) in a FMP would violate National Standards 4 and 5 of the FCMA.

National Standard 5 proclaims:

Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.⁶⁷

The Draft Plan characterizes exclusive area registration as one of the "socioeconomic regulations" in the Alaska management regime,⁶⁸ admits that exclusive areas were "intended to protect local fleets,"⁶⁹ and explains that the concept "stimulates the development of local fleets."⁷⁰ The Draft FMP also acknowledges:

The economic impact upon local communities ... has been a major consideration as to whether a registration area warrants exclusive or nonexclusive status.⁷¹

(Emphasis added.)

Admittedly the "exclusive" and "nonexclusive" designations have resulted in dispersing effort, but, as the Draft FMP notes, this is an "effect"⁷²--it was not the purpose of the regulation. The exclusive area designation is, in reality, a method of allocating crab to the local fleets, and it is thus a violation of National Standard 5.

The "economic allocation" clause of National Standard 5 (originally contained in S. 961) was added by Senator Stevens

of Alaska. In adding this provision he remarked:

The intent ... is to make certain that those management and conservation measures shall not be for the sole purpose of economic allocation of the fishery resources. We have no such intent.

In effect, I am saying that a regional council could not, for example, say that only vessels over a certain size can fish for one species, and only those under another size for another species.⁷³

NPFVOA believes that establishing exclusive areas for the protection of local fleets, resulting in vessels fishing only on the stocks in one area, is analogous to the "one-size vessel/one species" example cited by Senator Stevens.

Exclusive areas are inefficient

The designation of areas as "exclusive" also violates National Standard 5 by failing to "promote efficiency in the utilization of fishing resources." In a study done on the effects of the 1975-1976 Alaska shellfish regulations on fishermen,⁷⁴ it was pointed out that, as a result of the exclusive area regulations, the total numbers of vessels fishing the eastern Bering Sea and western Gulf of Alaska (Yakutat and westward) "seem to have increased beyond the numbers which would have entered the fishery had free mid-season mobility between areas been allowed."⁷⁵ The study also speculated that removal of the exclusive designations would probably first result in "intense

competition and economic pressure." Many economically marginal vessels, smaller vessels, and vessels unwilling to fish far from the home port would be forced to leave the fishery, leaving a smaller number of vessels. The remaining vessels, however, would be more fully employed in harvesting king crab.⁷⁶

Had exclusive areas not been instituted, vessels could have moved freely into and out of the fishery until some level of economic efficiency was achieved throughout the entire fishery. What exclusive area regulation has done, however, is to cause the development of fleets for each exclusive area, leaving the fishery as a whole with too many vessels.

Congress was aware that management under the FCMA could cause changes in the composition of a fishery. The Senate Commerce Committee Report on S. 961 states:

Economic waste has occurred due to over-capitalization of harvesting fleets. Therefore, the committee believes that it should be the goal of the national management program to improve efficiency so that the cost of the product can be reduced⁷⁷

The preamble to NOAA's regulations implementing the FCMA also points out that:

One of the purposes of the Act, as described in Standard 5 ... is to promote efficiency in utilization of fishery resources, an effort that could result in change in the existing socioeconomic patterns.⁷⁸

(Emphasis added.)

Exclusive areas are discriminatory

There is also concern that the designation of exclusive areas violates National Standard 4 of the FCMA, which mandates:

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.⁷⁹

While exclusive registration areas may not be de jure (by law) discrimination between residents of different states, they can be construed as de facto discrimination against non-Alaskan fishermen. NPFVOA believes that, if the records are examined as to the state of residence of the owners of the large vessels which fished in an area the year before that area became "exclusive," the records will show that most of the owners resided outside Alaska. Thus, exclusive registration areas were established originally to protect local communities⁸⁰ by keeping non-Alaskan king crab vessels away.

As noted above, exclusive areas are a form of economic allocation. Certainly, relegating the larger nonresident vessels to offshore areas so that local fishermen can harvest the "local" resource cannot be considered "fair and equitable" allocation.

With regard to the elements of allocation and nondiscrimination embodied in National Standard 4, the Commerce Committee Report on S. 961 stated that

when allocation becomes necessary, it must be done judiciously and carefully to prevent discrimination or bias. Since there will be pressures on State representatives to protect the residents of their home State, nothing will destroy the effectiveness of this new management program [more] than if one State, or group of States, attempts to favor their own residents to the detriment of others.⁸¹

The NOAA regulations implementing the FCMA also declare:

Any plan must provide for fair and equal treatment of U.S. citizens and corporations operating or engaging in the fisheries concerned without regard to their particular state of residence or incorporation.⁸²

It is also doubtful that exclusive areas are allocations that are "reasonably calculated to promote conservation." One consequence of exclusive areas is the distribution of effort. If there were no quotas, then one might argue that exclusive areas "promote conservation." Under the Alaskan regime, however, area quotas conserve the king crab resource; exclusive designations are just a method of promoting and preserving local interests.

Exclusive registration is a limited access system

Since Alaska's regulations prohibit a vessel from fishing more than one exclusive area, these regulations can be considered as imposing a limited access scheme on the fishery. In order to institute such a system, Section 303(b)(6) of the FCMA requires that

the Council and the Secretary take into account--

- (A) present participation in the fishery,
- (B) historical fishing practices in,
- and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery, and
- (F) any other relevant considerations[.]⁸³

In the Draft FMP, there is no evidence that the Council considered these factors before proposing exclusive areas as a management measure.

Exclusive areas impede full use

The exclusive area system may also be incompatible with the Draft FMP objective of promoting full utilization of the king crab resource.⁸⁴ The designation of the areas of Prince

William Sound, Cook Inlet, and southeastern Alaska-Yakutat as "exclusive" and the low quotas for these areas have prevented larger vessels from exploring the offshore waters to find out whether there are enough crabs in these areas to make fishing economically feasible. Consequently, designating exclusive areas may hinder full utilization of the stocks.

VI. POT LIMITS

NPFVOA supports Option 2 (No pot limits). From a biological perspective, this option gives undersized crab a greater opportunity to escape: the absence of pot limits means that more pots are fished, and so soak time is longer.

A pot limit violates National Standards 4 and 5

Pot limits are characterized in the Draft FMP as "socio-economic regulations"⁸⁵ which are set to "encourage the local fishery."⁸⁶ The 150-pot limit for Kodiak (Option 1) was set "to reduce the competitive advantage of larger vessels"⁸⁷ and "reflects the average fishing capability within the fleet."⁸⁸

This pot limit violates National Standards 4 and 5 because:

(1) it has economic allocation as its sole purpose (it is for the advantage of the local fishery);

(2) it does not promote efficiency (it enables smaller vessels to remain in the fishery);

(3) there is no finding that this allocation is "fair and equitable to all such fishermen;" and

(4) it does not appear that this pot limit is "reasonably calculated to promote conservation" since a quota is in effect for the area.

A pot limit violates National Standard 7

Option 1 may also violate National Standard 7:

Conservation and management measures shall, where practicable, minimize costs⁸⁹

The Draft FMP points out that enforcement of the pot limit "has generally been difficult and impractical."⁹⁰ The study of the effects of the 1975-1976 Alaska Shellfish Regulations on fishermen also indicated that pot-limit violations are difficult to detect.⁹¹ Elimination of the measure, which is recognized as being unenforceable, would abate the costs of enforcement, not the least of which is fuel. This would comport with the view of Terry Leitzell that "[m]easures should be selected that to the extent possible, are least demanding of vessel and aircraft enforcement, and so help to reduce fuel costs."⁹²

VII. GEAR PLACEMENT

NPFVOA supports Option 1 (Maintain the status quo) to the extent that this option is made compatible with the Association's position on allowing gear storage on the fishing grounds.

VIII. GEAR STORAGE

NPFVOA prefers Option 3 (Pot storage on the fishing grounds).

Random storage saves fuel

Terry Leitzell remarked that "the impact of management measures on fishermen's use of fuel ... should be analyzed."⁹³ As Table 25 in the Draft FMP shows, random pot storage (at least in the Bering Sea) is the most fuel-efficient of the options proposed by the Council. This table also makes it apparent that Option 3 imposes the least financial burden on fishermen. For example, in comparing random storage with storage in designated high-seas areas (the second least costly option in terms of fuel use and total expenditures), one finds that random storage saves fishermen 441,240 gallons of diesel fuel and \$573,588.

Fishermen generally would not want to leave their pots on the Bering Sea grounds between the king crab and tanner crab seasons: with the ice conditions, the risk of pot loss is too great. Between the close of the tanner crab season and the

beginning of the king crab season in this area, however, time is short. To require removal of gear from the fishing grounds for this period is an unnecessary financial burden on the crabbers and a waste of the nation's fuel supplies.

The factors which the Draft FMP purports to balance against random pot storage are:

- (1) enforcement costs associated with opening and closing seasons,
- (2) the fair and equal start of the crab season among all users, and
- (3) the biological risks to crab and other fishery resources.⁹⁴

The Draft Plan fails to expound these factors, but NPFVOA believes these considerations to be without merit. They are discussed below.

Random storage adds no enforcement costs

Allowing random storage and continuing the present system of vessel tank inspections five days after the season opens in the Bering Sea imposes no additional enforcement costs for the opening of seasons. Enforcing closures is presumably done by monitoring landings; again, random storage should result in no greater enforcement costs than those required by the other options.

Random storage allows fair starts

According to the Draft FMP, inspections of vessel tanks in the Bering Sea five days after the opening of the seasons tend "to equalize the start of actual fishing."⁹⁵ Retention of this requirement would negate any arguments that random storage prevents "fair starts" by facilitating covert fishing. Tank inspection after season openings could also be extended to other areas.

Neither does random storage thwart an equitable start by preempting prime fishing grounds. King crabs are mobile; storage of pots in an area where crabs seem abundant does not assure that the crabs will be there later.

Random storage poses no biological risks

The Draft FMP implies that there may be "potential biological risks" as a consequence of this option, but it fails to indicate what these risks may be.

Storage of pots with bait and bait containers removed and doors locked open would seem to minimize any hazards to crabs and fish. Tank inspections after season openings should eliminate the possible biological risks of covert fishing.

Random storage in the Bering Sea also reduces gear conflicts, because the pots are dispersed over an area encompassing several hundred thousand square miles.

The costs and risks of the
other options are unjustifiable

As detailed in Table 25 of the Draft FMP, the costs (in money and fuel) associated with Option 1 (Maintain the status quo) and Option 2 (Remove pots during closures) are much higher than those of random pot storage. Therefore Options 1 and 2 are in conflict with National Standard 7, which states:

Conservation and management measures shall,
where practicable, minimize costs⁹⁶

Nor do Options 1 and 2 take into consideration the remarks by Terry Leitzell (noted above) about the fuel costs imposed on fishermen.

Option 1 has resulted in a high density of gear in the Bering Sea storage areas. Consequently, risks of pot losses and interference with navigation have increased. In addition, the high concentration of pots has effectively precluded vessels with mobile gear from fishing these areas.

The Council should be made aware that the director of the Fish and Wildlife Protection Division of Alaska's Department of Public Safety wrote in 1978 to the Council's executive director that the State was not capable of monitoring pot storage in waters of 25 fathoms or less.⁹⁷ NPFVOA questions whether enforcement capabilities have improved.

Option 2 fails to take into account the lack of sufficient facilities on land to store all the gear fished in the Bering Sea.

Finally, NPFVOA opposes Options 1 and 2 for safety reasons. Removal of gear from the grounds in poor weather poses hazards to smaller boats and their crews.

IX. VESSEL TANK INSPECTION

NPFVOA favors Option 1 (Maintain the status quo). As detailed in its position on random gear storage (above), NPFVOA believes that tank inspections are necessary to prevent covert fishing and to assure fair starts.

It should also be stressed that vessel tank inspections are the least costly method of enforcing season openings.

X. LIMITED ENTRY

A major difficulty in commenting on the Council's "limited entry" proposal is that the Draft Plan fails to define this term. NPFVOA is assuming that "limited entry" means a program which limits the number of participants in a fishery. However, the Association views limited entry as being just one form of a "system of limited access" which may be instituted under the FCMA.⁹⁸ As noted above, exclusive area registration, which restricts a vessel to one exclusive area, is another form of limited access system. In commenting on the limited entry options, NPFVOA feels that it is relevant and necessary to discuss limited access systems in general, as well as limited entry programs.

NPFVOA supports Option 3 but rejects any form of limited access system for the king-crab fishery. It views any limited access system as being concerned with economic allocation, not conservation.

The two reasons given in the Draft FMP for considering a limited entry scheme are economic efficiency and administrative control.⁹⁹ The Draft Plan also hints at an investigation of limited entry because of increases in vessels and gear, especially in the southeastern Bering Sea, and anticipated recruitment declines.

Current management practices
have caused economic inefficiencies

It must be emphasized that most of the inefficiencies which exist in the king crab fishery today are attributable to the current Alaska management regime. As discussed above, exclusive area registration is a limited access system which has caused more vessels to enter the fishery than would have, had the system not been adopted. It is the one management measure most responsible for economic inefficiencies in the king crab fishery. Multiple age-class management (see pages 21-24), pot limits (see pages 32-33), and gear storage requirements (see pages 34-38) are other current Alaska practices which have contributed to overcapitalization of the fleet and economic waste.

Limited entry does not guarantee an economically efficient fishery. If a limited entry program were adopted, those vessels

now fishing would, of course, be "grandfathered" in, and the marginally productive vessels still would remain in the fishery. Thus the management regime would continue to sanction those economic inefficiencies which it deprecates. NPFVOA believes that the elimination of uneconomic practices should be left to the free market system, not the conservation and management system.

Administrative control should not be a factor

The Draft Plan mentions that "administrative control should be facilitated somewhat by a limited entry program,"¹⁰⁰ yet fails to indicate what is meant by "administrative control" and why it is necessary for the king crab fishery. Terry Leitzell stated:

Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business, consistent with ensuring conservation and reducing conflict in the fishery.¹⁰¹

(Emphasis added.)

Limited entry in one fishery will close other fisheries

NPFVOA also sees a domino effect from imposing limited entry on a fishery. Vessels displaced from the limited fishery will move into open fisheries, capitalizing those until other limited entry programs must be implemented. Eventually there will be no fishery to which there is unrestricted entry.

Limited entry is contrary to a way of life

NPFVOA's members own most of the vessels that fish for king crab in the Bering Sea, the area where the Draft FMP suggests that a study into limited entry may be desirable. If a limited entry scheme were implemented, these fishermen would stand to gain the most--they would obtain what is tantamount to property rights in a public resource. Nevertheless, they are philosophically opposed to limited entry.

Generally, NPFVOA's members come from families with a long heritage of fishing. They are keenly aware that fishing success is akin to "survival of the fittest" and that the fishery resources cannot always promise a constant yield. They also realize that, in times of low resource productivity, competition may force them out of one fishery, causing them to diversify into other fisheries or leave fishing entirely. However, they are willing to take these risks and oppose limited entry to ensure that they and others can have the opportunity to succeed or fail on their own skills and initiative.

Limited entry will discourage future fishermen

Sustained productivity of the fishery depends on continual renewal of not only the fish, but also the fishermen. The spectre of limited entry makes NPFVOA wonder where our future fishermen will come from.

When a young person begins a fishing career as a deck hand, it is realistic to expect that, with skill and hard work, one can become a master, and ultimately a vessel owner. Most of NPFVOA's members have trodden this path of upward mobility; all want this route to remain open. With limited entry, however, it is unlikely that one can aspire to buy both a boat and a limited entry permit. Consequently, many of the bright and capable people of the next generation who might have entered the fishing industry will never become professional fishermen and boat owners.

Limited entry foments injustices

NPFVOA sees another injustice resulting from limited entry besides that of giving some individuals the exclusive right to harvest a public resource. Persons with limited entry permits can work open fisheries at any time to supplement their income; but people without limited entry permits cannot, in times of financial hardship or resource failure in the open fisheries, turn to the limited fisheries for financial survival.

XI. PERMIT REQUIREMENTS

The Draft FMP requires that a vessel fishing in the FCZ have on board a permit issued by the Secretary of Commerce or a vessel license from Alaska.¹⁰² Although this management measure has no options for public comment, it raises serious legal

problems which deserve scrutiny by the Council.

Obtaining a state permit should not be a requirement of a federal management program. The FCZ is an area where the federal government exercises "exclusive fishery management authority."¹⁰³ Only a federal permit should be necessary.

As noted above (pages 5-8), obtaining a state license, in Alaska's view, would subject a nonresident vessel to the state's control when that vessel is fishing beyond the state's (Alaska's) boundaries. This issue--state authority over nonresidents fishing in the FCZ--should be resolved before the Council allows a state license to be substituted for a federal permit.

The Alaska vessel-license fee
may not comport with the FCMA

NPFVOA questions whether the fee charged for an Alaska vessel license comports with Section 304(d) of the FCMA, which states, in part:

Such level [of fees to be charged for a permit to fish] shall not exceed the administrative costs incurred by the Secretary in issuing such permits.¹⁰⁴

Although an Alaska vessel license costs only twenty dollars, there has been no finding that this fee does not exceed the administrative costs incurred in issuing the permit. As will be discussed below, for the vessel license to serve any use, an interim-use permit and a commercial fishing license must

also be purchased. Together, the fees for these permits to fish greatly exceed the administrative costs of issuing the permits.

State fishing fees may violate
the United States Constitution

If the \$20 fee were the only issue regarding the Draft FMP's state license requirement, NPFVOA would not be concerned. However, the state license requirement for FCZ fishing poses other legal problems. A state vessel license by itself does not entitle anyone to fish or possess shellfish in state waters. At least one crew member on board must have a valid interim-use permit "allowing him to take the fish or shellfish in his possession with the gear with which the vessel is equipped"¹⁰⁵ Other crew members must have a commercial fishing license.¹⁰⁶ Therefore, in adopting the Alaska vessel license for FCZ fishing, the Council is also adopting the interim-use permit and commercial fishing license systems.

As noted above, the fee for a vessel license is \$20, regardless of residence. In 1981 the following annual fees will be charged for interim-use permits in the western Gulf of Alaska and the Bering Sea:¹⁰⁷

<u>AREA</u>	<u>VESSEL SIZE</u>	<u>RESIDENT</u>	<u>NONRESIDENT</u>
Kodiak, Dutch Harbor, Alaska Peninsula	large*	\$200	\$600
	small**	\$150	\$450
Adak	large	\$200	\$600
Bristol Bay	large	\$250	\$750
	small	\$200	\$600
Bering Sea	large	\$200	\$600
	small	\$200	\$600

*Vessels with registered length over 50 feet

**Vessels with registered length of 50 feet or less

A commercial fishing license for crew members costs residents ten dollars and nonresidents thirty dollars.¹⁰⁸

For interim-use permits there is a large discrepancy between the fees charged residents and nonresidents; with the exception of the Bering Sea, there is also a 25-33 percent difference between the fees levied on large vessels and small vessels. Nonresidents are charged three times the price residents must pay for a commercial fishing license. These variations raise serious concerns as to whether the Alaska license and permit fee structures are in violation of the United States Constitution: the privileges-and-immunities clause of Article IV, Section 2,¹⁰⁹ and the equal-protection clause of Amendment XIV.¹¹⁰

Until a legal review of the state's fee structures is conducted, the Council should not even consider allowing a state vessel license to be used in lieu of a federal FCZ permit. To do so may be sanctioning illegal acts by Alaska.

XII. REPORTING REQUIREMENTS

Section 8.4 of the Draft FMP¹¹¹ is unclear as to who is responsible for submitting statistics. The section begins, "Catch reporting by the fishermen and the buyers is necessary for proper management", which leaves one with the distinct impression that all fishermen are required to submit reports. Reading on, it appears that buyers and processors (including catcher-processors) are required to submit reports. The only vessels to which NPFVOA wants the reporting requirement to apply are vessels that process their own catch or the catch of other vessels.

The Draft FMP does not define "buyers", "fish buyers", or "processors."

OTHER COMMENTS

A fisherman should be on the FMP team

NPFVOA feels that a fisherman should be appointed to the standing team which will monitor the effectiveness of the king crab FMP. An experienced fisherman can advise agency managers on ways that the FMP is affecting fishing practices and suggest changes.

By acting as a go-between, he can facilitate and improve relations between industry and management. In addition, the presence of a fisherman on the Plan Maintenance Team would inspire greater confidence in the Council's management decisions. Fishermen would feel that they are an integral part of Council management, and that the Council is truly concerned about

making the management regime as responsive as possible to the needs of those harvesting the resource.

Full texts of relevant Alaska laws should be included

Some parts of the Draft FMP which explain current management practices by Alaska were not written clearly. For clarity, and because Alaska's king-crab regulations are management options proposed by the Council, it is necessary that the relevant portions of the Alaska Statutes and the Alaska Administrative Code be appended to the Draft Plan before it is distributed to the public.

Since most readers do not have access to a law library, incorporation of these regulations by reference only does not facilitate understanding of the Draft FMP and its proposed options.

Such appendix should be labeled "for information purposes only," so that any changes by Alaska will not require amendment of the FMP.

* * *

NOTES

1. Western Alaska King Crab Draft Fishery Management Plan, page 38. [Cited here as DFMP 38.]
2. Title 16, United States Code, Sections 1801 and following; Public Law 94-265, as amended. [Cited as 16 U.S.C. 1801 et seq., Pub. L. No. 94-265, as amended.] [Cited here as FCMA.]
3. A Legislative History of the Fishery Conservation and Management Act of 1976, U.S. Senate Committee on Commerce, 94th Congress, 2d Session, October 1976. [Cited here as Legislative History.]
4. Guidance for Regional Fishery Management Councils, Final Regulations; Title 50, Code of Federal Regulations, Parts 601 and 602. [Cited as 50 C.F.R. Parts 601-602.]
5. 16 U.S.C. 1852(h) (1).
6. 16 U.S.C. 1801(b) (4).
7. 50 C.F.R. 601.11(b) (2) states:
"Within the geographical area of authority, each Council shall develop fishery management plans for each fishery" (Emphasis added.)

50 C.F.R. 602.1(a) declares:
"A major purpose of the Fishery Conservation and Management Act is to provide for the preparation and implementation ... of fishery management plans that will achieve and maintain ... the optimum yield from each fishery covered by the exclusive fishery management authority established by the Act."
(Emphasis added.)
8. Legislative History 76 says:
"Each Council is directed to prepare a fishery management plan for each fishery within its geographical area of authority, with respect to any fish over which the United States exercises exclusive fishery management authority."
(Emphasis added.)

Also see Legislative History 73.
9. Hearings on Fishery Conservation and Management Act Oversight Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, House of Representatives, 96th Congress, 1st Session, Serial No. 96-17 (October 11, 1979) at [page] 779.

10. DFMP Section 2.2.
11. 43 U.S.C. 1301-1315 (Act of May 22, 1953).
12. 72 Statutes at Large 343; Public Law 85-508, Section 6(m).
[Cited as 72 Stat. 343, Pub. L. No. 85-508 Section 6(m).]
13. Legislative History 265, 459-61, 463, 659, 834, 846-47, 1080-81.
14. 16 U.S.C. 1811; FCMA Section 101.
15. 16 U.S.C. 1812; FCMA Section 102.
16. 16 U.S.C. 1856(a).
17. Skiriotes v. Florida, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941).
18. Alaska Statutes, Section 16.05.475(c).
[Cited as A.S. 16.05.475(c).]
19. Title 5, Alaska Administrative Code, Chapter 39, Section 120.
[Cited as 5 A.A.C. 39.120.]
20. S. 961 Section 202(c):
 "[E]ach Council ... (3) shall identify fisheries in need of conservation ...; (4) shall develop ... an overall fishery management plan for each fishery ... which is in need of management and conservation"

Section 203(a):
 "As soon as practicable, each Council, or the Secretary, shall identify fisheries in need of conservation."

See Legislative History 279, 280, 689.

H.R. 200 Section 305(c)(2):
 In reviewing fishery management plans submitted by a Council, the Secretary shall "evaluate the need for, and the extent to which, the plan will contribute to the conservation and management of such fish[.]"

See Legislative History 985. Also see Legislative History 1118.
21. 16 U.S.C. 1851(7).
22. 16 U.S.C. 1861.
23. 16 U.S.C. 1852(h)(1).
24. 16 U.S.C. 1855(a).
25. 16 U.S.C. 1855(c).
26. 16 U.S.C. 1855(g).

27. 16 U.S.C. 1801(a) (6); FCMA Section 2(a) (6).
28. 16 U.S.C. 1801(a) (7); FCMA Section 2(a) (7).
29. Legislative History 470.
30. Legislative History 846-47.
31. 16 U.S.C. 1853(b) (5); FCMA Section 303(b) (5).
32. Legislative History 1081.
33. 16 U.S.C. 1801(b) (5); FCMA Section 2(b) (5).
34. 16 U.S.C. 1801(c) (3); FCMA Section 2(c) (3).
35. DFMP 38.
36. 16 U.S.C. 1852(a) (7); FCMA Section 302(a) (7).
37. 50 C.F.R. 601.22(e) (1).
38. 16 U.S.C. 1852(h) (3); FCMA Section 302(h) (3).
39. 16 U.S.C. 1855(a); FCMA Section 305(a).
40. 42 U.S.C. 4321 et seq., Pub.L.No. 91-190.
41. Administrative Procedure Act, 5 U.S.C. 553.
42. 16 U.S.C. 1861(d); FCMA Section 311(d).
43. DFMP 9.
44. 16 U.S.C. 1851(a) (3); FCMA Section 301(a) (3).
45. 50 C.F.R. 602.2(d) (1).
46. DFMP 3.
47. DFMP 3.
48. 16 U.S.C. 1812; FCMA Section 102.
49. 16 U.S.C. 1856(b) (1); FCMA Section 306(b) (1).
50. DFMP 107.
51. DFMP 76.
52. DFMP 76.
53. DFMP 76.

54. DFMP 65.
55. NRC study 14. [Full citation is on page 19.]
56. NRC study 38.
57. NRC study 38
58. NRC study 38.
59. NRC study 38.
60. NRC study 38.
61. NRC study 46.
62. NRC study 48.
63. Undated letter, believed to have been sent in May 1980.
64. NRC study 64.
65. DFMP 89.
66. DFMP 70.
67. 16 U.S.C. 1851(a)(5); FCMA Section 301(a)(5).
68. DFMP 1.
69. DFMP 64.
70. DFMP 71.
71. DFMP 90.
72. DFMP 90.
73. Legislative History 345.
74. Philip L. Katz & L.J. Bledsoe, "Alaska Shellfish Regulations: Present Impacts on Fishery Participants," Transactions of the American Fisheries Society, Vol. 106, No. 6 (November 1977), pages 505-29. [Cited here as Shellfish Reg. Impacts.]
75. Shellfish Reg. Impacts 509.
76. Shellfish Reg. Impacts 509.
77. Legislative History 686.
78. Preamble to 50 C.F.R. 601-602; Federal Register, Vol. 42, page 34452 (July 5, 1977). [Cited as 42 Fed.Reg. 34452 (1977).]

79. 16 U.S.C. 1851(a)(4); FCMA Section 301(a)(4).
80. See notes 69-71 above.
81. Legislative History 686.
82. 50 C.F.R. 602.2(e)(1).
83. 16 U.S.C. 1853(b)(6).
84. DFMP 72.
85. DFMP 1.
86. DFMP Section 2.4.5.
87. DFMP 90.
88. DFMP 9.
89. 16 U.S.C. 1851(a)(7); FCMA Section 301(a)(7).
90. DFMP 70.
91. Shellfish Reg. Impacts 512.
92. Letter to Regional Council chairmen. See note 63 above.
93. Letter to Regional Council chairmen. See note 63 above.
94. DFMP 93.
95. DFMP 94.
96. 16 U.S.C. 1851(a)(7); FCMA Section 301(a)(7).
97. Letter to Jim Branson from Colonel Fred M. Woldstad, dated January 16, 1978.
98. 16 U.S.C. 1853(b)(6); FCMA Section 303(b)(6).
99. DFMP 94.
100. DFMP 94.
101. See note 63 above.
102. DFMP 95.
103. 16 U.S.C. 1812; FCMA Section 102.
104. 16 U.S.C. 1854(d).
105. 20 A.A.C. 05.110.

106. A.S. 16.05.480; A.S. 16.43.140.
107. Commercial Fisheries Entry Commission
Permit Application/Renewal Form.
108. A.S. 16.05.480.
109. "The Citizens of each State shall be entitled to all
Privileges and Immunities of Citizens in the Several States."
110. "No State shall ... deny to any person within its jurisdiction
the equal protection of the laws."
111. DFMP 96.

* * *

North Pacific Fishery Management

SSC
AGENDA F-2
January, 1981

Clement V. Tillion, Chairman
Jim H. Branson, Executive Director

Suite 32, 333 West 4th Avenue
Post Office Mall Building



Mailing Address: P.O. Box 3136DT
Anchorage, Alaska 99510

Telephone: (907) 274-4563
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December 12, 1980

Dr. William Aron, Center Director
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Northwest and Alaska Fisheries Center
2725 Montlake Boulevard
Seattle, Washington 98112

Dear Bill:

On December 8, 1980, the Scientific and Statistical Committee of the NPFMC received your review of the RFP (81-1) for a study of data on feeding habits and food requirements of marine mammals in the Bering Sea. You indicated that, "The National Marine Mammal Laboratory through its Bering Sea Marine Mammal/Fisheries Interaction Task has already fulfilled work statement items 1-3 up to the second level."

In view of that statement, the SSC has recommended that further action on RFP 81-1 be tabled until such time as the information compiled by your staff can be reviewed and evaluated.

We request that an adequate report useful to the NPFMC, addressing work statement items 1-3 up to the second level, be made available to the SSC. It would greatly facilitate our goal of including adequate consideration of marine mammals in fishery management plans for the Bering Sea, if this report can be made available by the time of our next SSC meeting. That meeting will begin on January 5, 1980, in Seattle. It would also be greatly appreciated if you or your designee would be prepared to present a review of the report, and be available to answer questions at that time.

Sincerely,

A handwritten signature in dark ink, appearing to be 'D Rosenberg', written over a horizontal line.

Donald Rosenberg, Chairman
Scientific and Statistical Committee
North Pacific Fishery Management Council

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