

M E M O R A N D U M

TO: Council, AP and SSC Members
FROM: Jim H. Branson
Executive Director
DATE: May 14, 1987
SUBJECT: Legislative Update

ACTION REQUIRED

Information only.

BACKGROUND

Congress has been very active recently in introducing legislation and conducting hearings on matters of interest to the Council. Listed below are descriptions of legislation not previously discussed by the Council and a report on Congressional hearings recently held or pending.

I. NEW LEGISLATION

A. Fishing Vessel Safety. On March 26, 1987 legislation was introduced in both the House and Senate that sets safety standards for commercial fishing vessels and provides compensation for injured fishermen. Title I of H.R. 1841 (sponsored by Representatives Studds, Don Young, and others) and S. 849 (sponsored by Senators Chafee and Kerry) provides the following:

1. A seaman may not sue to recover for any loss resulting from a temporary illness or injury suffered during the course of his employment on a fishing, fish processing, or fish tender vessel as long as the employer or vessel owner pays for wages (maintenance) equal to 80% of the seaman's wage or share, or \$30 a day, whichever is higher, during the recovery period and for medical care (cure).

2. The limitation on compensation will not apply if a temporary illness or injury was caused by the employer's or vessel owner's gross negligence or willful misconduct, by a violation of safety standards set out in Title II of the legislation, or failure to provide the maintenance and cure in the manner describe in Section 1 above.

3. A two-year statute of limitations is established for litigation against the employer or operator of a fishing, fish processing, or fish tender vessel for death or injuries suffered by a seaman on such a vessel.

Title II of both bills establishes the following safety standards and equipment requirements for commercial fishing, fish processing, and fish tender vessels:

1. Proper venting is required in engine and fuel tank compartments;
2. Vessels must carry fire extinguishers capable of extinguishing a fuel fire, life preservers or other life-saving devices for each person on board, flame arrestors or backfire traps on gasoline engines, visual distress signals, EPIRBs, lifeboats, survival suits, emergency radio equipment, and other equipment the Secretary of Transportation may deem necessary;

Additionally, both bills would establish a commercial fishing industry vessel advisory committee to advise the Secretary of Transportation on safety matters. A hearing on H.R. 1841 will be held in Washington, D.C. on June 11 by the Fisheries & Wildlife, Coast Guard, and Merchant Marine Subcommittees of the House Merchant Marine and Fisheries Committee.

B. National Sea Grant Program. On March 19, 1987 H.R. 1717 was introduced by Representative Walter Jones to strengthen the Sea Grant program and H.R. 1727 was introduced by Representative Mike Lowry to reauthorize the Sea Grant Program through FY 1992. H.R. 1717, the Merchant Marine Resources Investment and Economic Competitiveness Act of 1987, creates a strategic marine resource program to focus on research needs that are of national or global importance and that require a broad university role. Such areas of research could include marine biotechnology, Great Lakes water levels, policy and technology of the EEZ, and estuarine and coastal ocean resource studies. H.R. 1727 proposes to increase Sea Grant's base authorization from \$50 million in FY 1988 to \$62 million in FY 1992. Additionally, the bill would create a strategic research program, initiate a new post-doctoral fellowship program, and authorize funds for the establishment of institutes or centers for resource management and marine affairs.

On May 13, the Senate Commerce Committee considered Sea Grant reauthorization. Senators Hollings and Stevens propose to increase the base authorization levels from \$46 million in FY 1988 to \$54 million in FY 1992. Additional appropriations would be provided for strategic marine research and international programs.

C. NOAA as an Independent Agency. Bills have been introduced in both the House and Senate to establish NOAA as an independent agency. The Senate legislation is S. 330 by Senators Roth & Cohen, and S. 821, by Senator Weicker. The House legislation, H.R. 2135, was introduced by Representative Watkins.

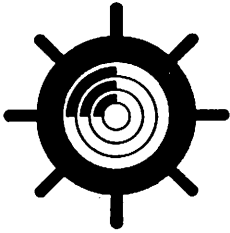
D. Marine Policy Commission. S. 562 by Senator Weicker, and H.R. 1171 by Representative Walter Jones, propose to establish a National Marine Policy Commission. The Commission would make recommendations to Congress and the President on developing a comprehensive marine policy for the U.S. A hearing will be held on H.R. 1171 by the House Merchant Marine & Fisheries Committee on May 21 in Washington, DC. No action has, as yet, been scheduled by S. 562.

II. CONGRESSIONAL HEARINGS

A. Reflagging of foreign vessels. The Senate Commerce Committee held a hearing on Senators Stevens' and Murkowski's reflagging bill, S. 377, on April 28. On April 29 a joint hearing was held by the Fisheries & Wildlife Conservation, Merchant Marine, and Coast Guard Subcommittees of the House Merchant Marine & Fisheries Committee to consider reflagging legislation introduced by Representative Don Young, H.R. 438, and Representative Mike Lowry, H.R. 1956. A mark-up session on the House legislation will be held by the full Merchant Marine & Fisheries Committee on June 9.

B. High Seas Driftnets. A hearing was held by the Senate Commerce Committee on April 30 to consider S. 62, Senator Stevens' bill on high seas driftnets. Council member Henry Mitchell testified at that hearing as a representative of the Bering Sea Fishermen's Assn.

C. Fish Inspection. A hearing will be held on June 2 by the House Agriculture Committee on H.R. 1483 (by Representative Dorgan) that proposes to establish a mandatory inspection program for all commercially processed fish products used for human consumption.



**North Pacific
Fishing Vessel
Owners' Association**

May 15, 1987

Mr. Larry Cotter, Chairman
NPFMC Crab Committee
411 West 4th Avenue
Anchorage, AK. 99510

RE: Cooperative State/Federal Crab Management, NPFMC Crab
Committee; Minimal Protections for Nonresident Fishermen

Dear Larry:

The NPFVOA, joined by a broad spectrum of industry interests, would like to reiterate its views on crab management and to clarify our understanding of the function of the NPFMC Crab Committee. We would also like to suggest minimal protections which should be afforded nonresident crab fishermen in any cooperative crab management program.

While we remain firmly in favor of exclusive federal management of crab resources off Alaska, we are willing to try to develop a cooperative management program involving both state and federal authorities (please see attachments). Any such program will have to incorporate the same protections for nonresident fishermen as would exclusive federal management under the Magnuson Act and other applicable law. We intend to work towards that end with the NPFMC Crab Committee. If we are successful, we will attempt to convince the many doubters among nonresident fishermen that an experiment in cooperative management under federal principles is worthwhile. It should be clearly understood that support for this approach is far from universal, and that our participation does not assure ultimate acceptance of the Committee's product.

The first draft FMP was not made available far enough in advance of the first meeting of the Crab Committee to allow preparation of meaningful comments. Having reviewed the second draft, we would like to offer the following observations regarding -

MINIMAL PROTECTIONS WHICH SHOULD BE ACCORDED NONRESIDENT FISHERMEN.

1. Fishery Management Plan

A fishery management plan which is a plan, and which clearly guides management in a predictable manner, is necessary. All management measures and the standards by which they are to be implemented should be described clearly.

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2. Management Unit

The management unit covered by the FMP should include the Gulf of Alaska, which has traditionally been fished by nonresident as well as resident fishermen. Nonresidents were recently obliged to bring a lawsuit, NPFVOA v. Sheffield, to have state regulations inimical to their interests in the Gulf set aside. There should be no opportunity for future imposition of similar regulations.

3. Categories for Management Measures

Only two categories of management measures should be established - measures reserved to the Secretary of Commerce and the Council (Category I) and measures "frameworked" for action by the Board of Fisheries (Category II). Having reviewed the proposed measures and categories, this constituency is of the view that all measures should be frameworked at a minimum, and that frameworked measures must be adequately documented - see paragraph G, below.

4. Distribution of Measures within the Categories

Fishing Seasons and Gear Restrictions should be added to Category I. Reporting Requirements, Gear Placement, Gear Storage, and Vessel Tank Inspections should be added to Category II. Limited Entry, a measure not currently addressed in the draft FMP, should be placed in Category I.

5. Frameworking - Specific Criteria

It is proposed that certain measures be frameworked, for action by the Board. Criteria for change within the framework must be described with specificity. A laundry list of considerations or a description of possible rationales is not acceptable. The plan and implementing regulations must explain how various criteria will be weighed and how they will relate to one another in leading to a predictable management decision.

6. Consistency with Federal Law and Regulatory Policy - Standard of Review

The current draft plan makes it clear that State regulations must be consistent with the FMP, the Magnuson Act, and other applicable federal law. The Administrative Procedure Act (APA) should be specifically mentioned in this regard. Case law interpreting the APA requires that all relevant factors be considered in the development of regulations, and that the basis for any regulatory decision be articulated. Likewise, the standards established by

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Executive Order 12291, Federal Regulation, should be specifically incorporated into the plan (i.e. benefits derived from regulation must outweigh costs imposed, and the least burdensome alternative resolution to a problem must be adopted).

7. Documentation

Any actions taken by the Council and the Secretary of Commerce under Category I would of course be subject to the documentation requirements set out in the NOAA Operational Guidelines for the Fishery Management Process, and at 50 CFR 602.

Similar EA/RIR documentation analyzing the biological, socioeconomic and environmental impacts of preseason state regulations implementing measures listed under Category II should also be prepared, and made available to the public prior to Board action. This departure from the "frameworking" concept is necessary for several reasons, and is in the best interests of all concerned. Industry can participate meaningfully in the Board process only if it can review and comment on available scientific data, ascertain underlying rationales, and develop viable alternatives; it does not have the resources to provide this basic staff analysis. The Board needs this documentation to assure that its selected measures meet federal standards and will survive challenges in court. NMFS/NOAA needs such material to ascertain consistency with the FMP and with federal fishery management standards, and the courts need it if they are required to review Board actions. It is also worth noting that some of the Category II measures, such as Minimum Size Limits and Guideline Harvest Levels, are probably too complex for frameworking.

Inseason adjustments such as fishery closures should be implemented under procedures like those set out at 50 CFR 671.27. Data supporting such closures should be made available and public participation invited before action is taken (absent an emergency), and NMFS/NOAA should be consulted in the decisionmaking process. Supporting documentation should be made available at the earliest possible time, and an opportunity for public comment provided.

8. Preparation of Documentation

Documentation supporting Board actions should be prepared cooperatively by ADF&G, NMFS/NOAA and the Council Staff, as necessary. This policy will spread the work load, and will assure peer review.

9. Federal Participation in the Board Process

The draft FMP provides for attendance and participation of NMFS and Council staff at board meetings addressing crab management. A representative of the NOAA Office of General Counsel should attend, as well.

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10. Appeals

An opportunity for immediate and direct appeal of preseason Board actions or of inseason management actions to the Secretary of Commerce (NMFS/NOAA) should be provided. Appeal to the State should be optional, and should not be a prerequisite to appeal to federal authorities.

11. The Board Process

If necessary, the Board process should be modified to accommodate these protections - it does not appear that any such modifications would be substantial. Time should be allowed for the preparation and review of documentation supporting Board actions, and for completion of appeals processes. It might be necessary to advance the deadline for submission of proposals. Board deliberations on crab issues of concern to nonresident fishermen should be undertaken at a single time and on a fixed schedule. Decisions should not be subject to change at a later time and different place.

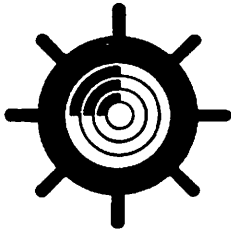
We are sincerely hopeful that the Crab Committee, the Council, NMFS/NOAA, the State of Alaska, and industry can devise a regulatory scheme for the crab fisheries off Alaska that meets the requirements of the MFCMA and protects the non-Alaskan beneficiaries of that law. We will do everything we can to achieve a regulatory program that meets those requirements.

Background materials are attached which should help you to appreciate our point of view.

Respectfully,



Thorn Smith
Executive Director



**North Pacific
Fishing Vessel
Owners' Association**

October Newsletter

Building C-3, Room 218 Fishermen's Terminal Seattle, Washington 98119 Telephone 206-285-3383

If brevity is the soul of wit, the September newsletter was a perfect joke. We are making up for it, though. This issue weighs four pounds, and has an index so you don't have to waste time looking for the good parts.

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CALENDAR OF COMING EVENTS

NPFMC Ad Hoc Crab Committee Meeting, Seattle	Nov. 20
Pacific Marine Expo, Seattle	Nov. 20,21,22
U.S./KOREA Fisheries Development Conference, Anchorage	Dec 4-6
North Pacific Fishery Management Council Meeting, Anchorage	Dec 8-12
NPFVOA General Membership and Election Meeting, Seattle	Dec 18
NPFVOA Christmas Dinner/Dance	Dec. 20

BERING SEA CRAB FISHERIES EXCEED EXPECTATIONS

Because of the willingness of the National Marine Fisheries Service, Alaska Region, to exercise mature inseason judgment regarding crab stocks status, the C. opilio harvest in the Bering Sea reached 103 million pounds - some 33 million pounds beyond the cumulative maximum guideline harvest levels established before the fishery began. CPUE's remained strong in the Pribilof District and the size of the crabs large, so NMFS allowed the fishery to harvest 52.3 million pounds - 17.3 million pounds above the 35 million pound upper limit of the guideline harvest level for that district. The Region was also willing to allow continuation of a fishery on new grounds north of 58 degrees N and west of 175 degrees W, which accounted in large measure for the balance of the excess above the 70 million pound combined maximum harvest guideline levels. Analysis of the results of the 1986 crab survey confirms the Region's suspicion that earlier estimates of harvestable biomass were too low, and there is no evidence that the increased harvests harmed crab stocks. We all know what this flexibility meant to the recovering crab fleet, and we salute Regional Director Bob McVey and his staff.

The Bristol Bay red king crab fishery has also been a success. As of this date the total harvest is estimated at 10.5 million pounds. Preliminary indications are that CPUE's averaged 12 legal crabs per pull over the season, fell off for a couple of days near the end, but came back strong. Abundance of females varied from area to area, and those encountered had full egg clutches. Fishermen reported many pre-recruit males in all areas.

At an ex-vessel price of more than \$4.00 per pound, the twelve-day fishery will provide a \$40 million shot-in-the-arm to the industry. One hundred fifty-nine boats participated in the fishery, with average landings of 72,000 pounds. High boats came in at something like 170,000 pounds. I calculate that I am in the wrong end of the business, and rumor has it that "ONE MORE MOLT" bumper stickers are selling like hotcakes in Kodiak - again.

Although the fishery performance data is encouraging, crab biologists warn against excessive optimism. The female red king crab population still appears to be far below optimum levels, and projected guideline harvest levels will likely remain static until the next trawl survey.

TRAWL FISHERIES FORGE AHEAD

The trawl fisheries are performing like a sailor's dream. Total joint venture activity, which reached 885,000 mt last year, is already approaching 1,200,000 mt. At current rates the 1986 total may approach 1,300,000 mt, a 47% increase over 1985. DAP groundfish harvest is expected to total 140,000 to 200,000 mt in 1986, depending

upon whose figures you use. In any event, the increase above 1985 performance will be substantial. These numbers are best current estimates, and final figures may vary. The magnitudes and rates are clear, however. The full development of the groundfish fishery is proceeding very rapidly, and it is expected that this growth will continue in 1987.

CRAB FISHERMEN AND TRAWLERS SHARE CONCERN OVER CRAB MANAGEMENT

The very success of the crab and trawl fisheries highlights the need for careful and consistent management. Crab fishermen are concerned about federal versus state management for obvious reasons (please see "Resource Review" article reproduced here, and refer to Tanner crab management comments of August 5, 1986, included in the August newsletter). At the September Council meeting it became apparent that trawlers have cause for concern, too. The power to manage incidental catch is the power to control a directed fishery, and letters presented to the Council by the Alaska Crab Coalition not only rejected the concept of federal management under a fishery management plan (FMP) but also proposed that management of incidental trawl catch of crabs be placed under the Alaska Board of Fisheries. This would all be accomplished under a "joint statement of principles" between the Board and the Council, which in our view does not afford nonresident fishermen the protection of the National Standards, other provisions of the Magnuson Act, or other applicable federal law. Problems associated with the Board and its processes are aptly described in the "Resource Review" article.

The close interrelationship of the crab and trawl fisheries also argues for their regulation by a single management entity. Many of the large and efficient vessels which operate in the Bering Sea and the Gulf of Alaska are designed to work in both fisheries, and move from one to the other as stock conditions dictate. Incidental catch problems are common to both, and measures to minimize them should be carefully co-ordinated. The North Pacific Fishery Management Council was established for the specific purpose of managing fisheries in the EEZ off Alaska, and is the appropriate body for the job. It operates under uniform standards and procedures designed to guarantee that conservation principles are observed while maximum economic benefit to the nation is derived from our marine fisheries resources. Just as important, the interests of nonresident fishermen are protected by the National Standards and by the presence of nonresident voting members on the Council and its Advisory Panel.

Despite our preference for exclusive management of the crab fisheries by the Council, the NPFVOA is prepared to participate in the development and implementation of a co-operative management program involving both state and federal authorities. Such an approach would involve a federal fishery management plan setting forth basic principles for management, improvement of the administrative record

created by the Board of Fisheries in reaching its management decisions, and a formal after-the-fact review of Board actions by federal authorities. An interstate advisory group could be established to aid the Board in its decisions, but such a group could by no means be considered a substitute for an FMP and formal federal review of an adequate record.

It should be noted that this proposal need not increase the work load of the Board, nor delay its processes - there are several management groups which are adequately staffed and competent to provide the biological and socioeconomic analyses which are a prerequisite to effective management under federal principles. The record so produced would allow all interested parties to participate meaningfully in the Board process, would provide a basis for prompt federal review, and would serve to protect Board decisions from legal challenges. This approach would allow the State of Alaska to play a central role in crab management without the delays associated with federal reviews, and would at the same time provide nonresident fishermen many of the safeguards created by federal law. Support for this compromise approach is not unanimous. Many nonresident fishermen and their representatives wish to "keep it simple", and favor exclusive federal management.

The Council has appointed an ad hoc committee of ten to address crab management questions. There is a genuine concern that this committee contains a substantial preponderance of individuals who favor state management under a "joint statement of principles" - an approach which is absolutely unacceptable to this constituency (please see Highliners' letter). The committee will meet on Thursday, November 20, at the NOAA Sand Point facility in Seattle. Failure to reach an effective compromise could precipitate the sort of "them-an-us" controversy which is so harmful to all interests.

Please take a moment to review the materials which follow.



**North Pacific
Fishing Vessel
Owners' Association**

September 22, 1986

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

Dear Jim:

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

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

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

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

Sincerely,


President



North Pacific
Fishing Vessel
Owners' Association

September 22, 1986

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

RE: Council Role in Crab Management

Dear Jim:

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

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

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

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

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

III. AGREEMENT ON AN ALTERNATIVE TO FULLY-ORTHODOX FEDERAL MANAGEMENT MAY BE POSSIBLE.

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

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

Yours,

Thorn Smith
Executive Director

THE HIGHLINERS ASSOCIATION

4055 - 21st Avenue West
Seattle, Washington 98199
Telephone (206) 784-5818 or 285-3493

October 31, 1986

President

Konrad S. Uri
Trans Pacific Seafoods Inc.

Mr. James O. Campbell

Co-Vice Presidents Chairman

Stanley J. Hovik North Pacific Fishery
Hovik Enterprises, Inc. Management Council

Hugh Reilly P.O. Box 103136
Westward Trawlers Anchorage, Alaska 99510

Technical Representative

Dr. Dayton L. Alverson
Natural Resources Consultants

Dear Jim:

Members

Barry Fisher
Yankee Fisheries

Sam Hjelle
Glacier Fish Co.

Francis L. Miller
Arctic Alaska Seafoods Inc.

Several weeks ago the Highliners outlined their views regarding future state/federal management for crab. We note that the Council has now established a "Crab Management Committee" to suggest potential solutions to this management issue. In reviewing the composition of the group, it would appear that you have initiated a process that is not likely to be very helpful. With the strong "mind set" of the individuals involved one can almost predict the coalitions which will form and their stands.

Einar H. Pedersen
F/V Vesteraaen

Einar Pedersen, Sr.
F/V Mark I

Dennis T. Petersen
Ocean Spray Fisheries, Inc.

Kenneth R. Petersen
American Fisheries Products

Rudy A. Petersen
North Pacific Fishing, Inc.

Although the efforts of the group are to be applauded, we hope that the Council would recognize that the concerns on the part of many Puget Sound and Oregon fishermen who harvest and process the vast majority of the crab taken in the FCZ stem from a fear that state management would ignore the basic principles of the MFCMA or deal with them in a superficial way--that is, no effective federal overview. Finally, there is the additional concern that if a major conflict arises between the state and the user groups that resolution of the conflict would be relegated to state court.

Frank T. Steuart
Steuart Fisheries

Marvin Stone
M. Stone Inc.

Reidar Tynes
Glacier Fish Co.

Hopefully, the Crab Management Committee will deal with these issues, but we doubt it and would urge that you keep the above concerns in mind when weighing the conclusion of the opposing fractions which are clearly identifiable in the make up of the committee.

Sincerely yours,

HSI

Hugh Reilly
Vice President

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Resource Review

Resource Development Council for Alaska, Inc. Box 100516, Anchorage, AK:
September 1986



Groundfish harvest

Alaska fishermen fight for share

by
Chris Blackburn

After nearly 25 years of promises and false starts, it appears that U.S. processors are mounting a serious effort to take over the harvesting of the groundfish — pollock, cod and flounder — in Alaskan waters, but whether Alaska processors and fishermen will be part of this development remains in doubt.

Fourteen Seattle-based factory trawlers are already harvesting groundfish off Alaska's coasts and another six are known to be under construction — the actual number is probably higher.

About a half dozen U.S.-owned floating processors, only one of which is based out of Alaska, are also at sea taking deliveries from U.S. vessels and several more are either under construction or in the planning stage.

Washington State residents are currently taking home about 90 percent of the money being made from Alaskan groundfish by U.S. vessels, including joint venture vessels, and U.S. processors. Oregon and California residents are also involved in Alaska's groundfish fisheries.

Only a handful of Alaska plants are processing any substantial quantity of groundfish — three which worked under state or federal grants and the two Dutch Harbor surimi plants which are Japanese financed as part of an industry "fish and chips" agreement.

Alaska's failure to participate in the processing and harvesting of the abundant groundfish stocks off its shores appears to be the result of past policies designed to protect Alaska coastal communities and new policies which discourage fisheries investment in Alaska.

Big Boat vs. Small Boat

The combination of weather and salmon created two crab fleets in Alaska. In coastal communities around the Gulf of Alaska the



Minced fish is mixed with stabilizers to make surimi at Alaska Pacific Seafoods in Kodiak. (Photo by Chris Blackburn)

resident salmon fleets developed the crab fisheries. Even today in Kodiak the mean keel length in the Tanner crab fleet is 58.1 feet.

However, for the Bering Sea Crab fisheries, larger vessels in the 100-foot class were required to withstand winter weather in the middle of nowhere. The large vessels demanded volumes of product and vast areas to fish. The owners tended to be fishermen from the Seattle area with a history of spending part of the year fishing Alaska and then returning home.

Inevitably, the resident Alaska fleets became concerned that the large "outside" crab

fleet would swoop through the areas fished by the resident fleet and "scoop up all the crab."

The Board of Fisheries over the years passed a series of regulations designed to make large boats uneconomical in the Gulf of Alaska — limits on the number of pots that could be fished, restrictions on the amount of area a vessel could fish.

The regulations worked, but they also prevented fishermen who wanted to fish near home from investing in bigger vessels.

As a result, the investment in high technology for the crab fisheries, in large vessels and in catcher-processors, was made mainly by non-resident fishermen working in the Bering Sea.

The Bering Sea crab fleet became 90 percent non-resident vessels; while the vessel Kodiak crab fleet remained 97 percent resident vessels. As a result, Alaska lost 40 percent of the exvessel value of its crab fisheries to Washington fishermen.

When the crab industry collapsed, it was the non-resident, large Bering Sea crabber

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Alaska fishermen struggle for share . . .

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which were the appropriate size to convert for joint venture trawling. It was former large boat, non-resident crab fishermen who saw opportunities for U.S.-owned factory trawlers to develop a U.S. groundfish industry.

In the salmon fisheries, where vessel size is limited by law, about 25 percent of the ex-vessel value goes to Washington-based fishermen. Fishermen from Oregon and California also participate in the Alaska salmon fishery.

The numbers indicate that where a large boat fleet is necessary, only about 10 percent of the fleet will be Alaskan-based; where a mix of large and small vessels can be used, Alaska's share of the catch jumps to around 50 percent and when the fishery is limited to small vessels, Alaskans take 60 to 70 percent of the catch.

Thought should be given to whether policies encouraging Alaska residents to invest in large vessels would increase Alaska's share in the groundfish and shellfish fisheries.

The other obvious conclusion is that non-resident large harvesting and processing vessels are here to stay and Alaska can profit by offering them services, trans-shipping facilities and docking space.

Because Alaska has considered itself a state of small-boat fishermen, most of its harbors and docks were built to accommodate small vessels. Even in Kodiak, which is home to a number of large vessels, there is only minimal large vessel docking space.

Raw Fish Tax

The raw fish tax, a tax on every pound of fish passing the dock or deck of a processor within the State of Alaska, has also served to encourage investment capital to look at financing groundfish processing at sea, outside state waters and beyond the reach of the raw fish tax.

Processors fought hard for some relief from the raw fish tax and this year the legislature allowed credit up to 50 percent of the tax owed for specified investments in shore-based plants. It's too early to tell if the raw fish tax credit will result in any significant investment in groundfish processing equipment by shore-based Alaska plants.

Floating operations pay a higher tax than shore-based operations — a differential originally intended to encourage shore-based investment, but in actuality it has worked to encourage floating operations to stay outside state waters.

While the state government has a right to realize revenue from its fisheries beyond creating employment for residents, methods that discourage shore-based investment are

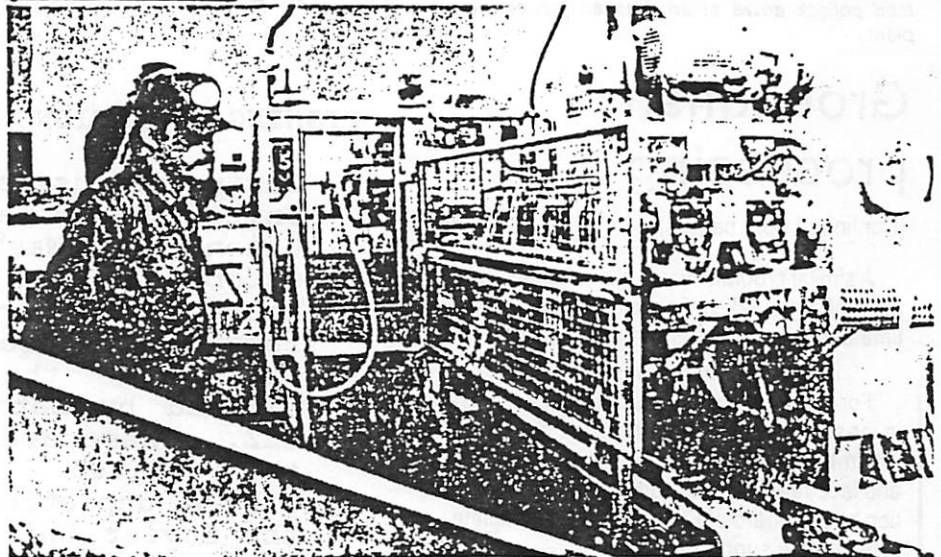
counter-productive. A reanalysis of the tax structure on processors is badly needed.

Regulatory Predictability

Alaska's fishing regulations are made by industry members appointed to the Board of Fisheries. The board meets twice a year for marathon sessions. There is no criteria the board must meet when passing regulations, nor is there any appeal process outside the court system.

The current board is dominated by salmon seine and drift net fishermen. There are no large boat fishermen and no trawl fishermen on the board.

During its March meeting the board closed major trawling areas in state waters to trawling based on fear that trawlers might damage crab stocks. There was no data to support the board's contention.



A computerized filleting machine turns out 120 fillets a minute for Alaska Pacific Seafoods surimi line in Kodiak. The line was set up under an Alaska Fisheries Development Foundation grant as a model surimi line.

Though the board felt its action was for conservation reasons, it also had a disquieting effect on processors contemplating major investments in groundfish processing equipment.

In short, processors realized that under the current board system they would always be in danger of losing the fishing grounds on which their fleets depended — that there was neither dependability, rationality nor stability in the state's regulatory system.

Any processor, before making multi-million dollar investments, needs assurance that the state cannot arbitrarily close down the fishery.

A similar set of criteria and method for ongoing education is needed for the Board of Fisheries if Alaska is to encourage shore-based groundfish processing.

Agency Support

The Alaska Department of Fish and Game has virtually eliminated its groundfish projects; has only one observer on the staff and has firmly stated its unwillingness to be involved in groundfish research or management as long as it has to coordinate with the federal government, which has management authority outside the state's three-mile limit.

As a result, there is no way for the state to collect the data on bycatch of halibut and crab in the trawl fisheries needed to determine reasonable time and area closures which would encourage groundfish fishing in state waters and give adequate assurance against unreasonable crab and halibut mortality by trawls.

The federal government has shown the same unwillingness to work with domestic

trawling — currently most of the bycatch information available is that collected by National Marine Fisheries Service observers aboard joint venture processors. The foreign companies paid the cost of the observers.

There has been talk on both the state and federal level about making U.S. trawlers pay for observers — which would preclude trawling by any but the largest vessels — which are non-resident vessels involved in joint ventures or factory trawlers.

Shrimp trawling coexisted with crab fishing for more than 20 years. The state maintained a strong shrimp program and sent observers out regularly to monitor the bycatch of crab and halibut.

(Continued on page 5)



Iced pollock arrive at an Alaskan processing plant.

Groundfish processing . . .

(Continued from page 4)

A similar program would allow the development of a groundfish fishery with appropriate time and area closures to protect crab.

Conclusions

For investors the options are clear — invest in at-sea groundfish processing and work within the federal system or invest in Alaska and face raw fish taxes, unpredictable regulation by the Board of Fisheries and a complete lack of state support.

At this point, without some radical changes in direction, the State of Alaska may be dealing its residents out of participating in Alaska's groundfish fisheries.

The entire picture could be changed if the state, instead of talking about "Alaskanizing the groundfish fisheries" took steps to create a stable investment climate.

I suggest that the state take a long look at the effect of the raw fish tax on investment in shore-based plants; fund and develop a strong groundfish program within the Department of Fish and Game which included an observer program to resolve the crab bycatch issues and set criteria, similar to federal criteria, governing the Board of Fisheries actions.

Without positive steps to encourage investment in Alaska for groundfish development, the state can expect to continue to see the profits from its major resource flow outside the state.

Chris Blackburn is director of Alaska Groundfish Data Bank, Kodiak, Alaska.

INTERIM RESOLUTION OF U.S. - U.S.S.R. CONVENTION LINE DISPUTE

On October 8 - 10, 1986, the Office of Polar Affairs, U.S. Department of State (DOS), engaged in continuing discussions with representatives of the U.S.S.R. on oceanic issues. On October 20, DOS made public the following paragraph of a cable, addressing the problem of interference with fishing activities in the disputed area of the Bering Sea:

FISHING OPERATIONS IN THE BERING SEA

During discussions between the United States and the Soviet Union in Washington, D.C. October 8-10, 1986, the two sides reached an understanding regarding vessels fishing in areas of the Bering Sea claimed by both countries as EEZ. These areas lie east of the United States' great circle depiction and west of the Soviet Union's rhumb line depiction of the 1867 Convention Line. During the course of these discussions, without prejudice to the position of either country, each side informed the other of its willingness and intention not to take enforcement or other actions against vessels of the other country fishing in the areas referred to above. In addition, each country would not permit vessels of third countries to fish in the aforementioned areas, and each country could take enforcement or other actions against third country vessels fishing in those areas.

April 20, 1987

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

RE: Proposed Secretarial Amendment to Repeal Tanner Crab Plan

Dear Bob:

We are writing to you on behalf of a coalition of Seattle-based fishermen with a history of fishing for crab and other marine resources in the FCZ off Alaska since long before the adoption of the MFCMA. We are submitting these comments on the proposed Secretarial amendment to repeal the Tanner Crab FMP. If adopted, this amendment would make the Tanner crab fishery in the FCZ off Alaska subject solely to Alaska state regulation for at least the next two seasons. Moreover, under the proposed draft "crab plan" now in the early stages of development by the Regional Council, the Gulf of Alaska crab fishery (both Tanner and King crab) would continue to be managed by the State of Alaska and to be insulated from any effective federal regulation or oversight. We cannot accept this. It runs counter to both the letter and the spirit of the MFCMA. The proposed action constitutes a reversal of a generation of fisheries management policy and a retreat from management of the fisheries resources of the U.S. FCZ for the benefit of the nation as a whole to management by a single state responsive to the parochial interests of a segment of its populace.

The Federal Register notice of proposed rulemaking states that the most significant perceived difficulties with the Tanner crab FMP relate to (1) the perceived inadequacy of the Regional Director's field order authority which "is too narrowly prescribed to allow NMFS to coordinate federal action with state in-season management decisions", and (2) NMFS' inability to modify season dates "in response to social or economic considerations." 52 Fed. Reg. 8320 (Col. 2) March 17, 1987. These problems should be remedied by

modifying the existing plan -- not killing it. Yet the proposed Secretarial amendment does not consider this alternative. Instead, it and the draft EA list only three alternatives to elimination of the FMP: the status quo, a Council amendment or temporary repeal of the FMP. Draft Environmental Assessment of a Secretarial Amendment Repealing the Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska and Its Implementing Regulations at 9-11.

We strongly urge NMFS not to adopt the proposed action. Instead, NMFS should do what it has failed to do since this issue arose in early 1986 -- prepare a Secretarial amendment to the Tanner crab FMP that rectifies the perceived defects, and keep the plan in place until the NPFMC Crab Committee can draft an acceptable alternative plan.

A. Factual Background

Washington fishermen pioneered development of both the king and Tanner crab fisheries off Alaska. From 1974 to 1983, the largely Puget Sound-based fleet landed more crab than any other fleet of crab vessels in the world. See Natural Resources Consultants, Commercial Fishing and the State of Washington (1986) at 31. Even after the decline of king crab and Tanner crab stocks in the early 1980's, the Washington State crab fleet in 1985 harvested more than half of the total king and Tanner crab catch in U.S. waters off Alaska, amounting to 7.1 million pounds of king crab with an ex-vessel value of \$19.4 million, and 51.1 million pounds of Tanner crab with an ex-vessel value of \$22.8 million. Id. at 32. The Washington fleet in that year consisted of about 109 vessels with a capitalized value of over \$163 million, and employing over 500 fishermen. An additional 25 catcher-processors and floating processors from the state with a capitalized value of \$137.5 million employed an additional 550 persons in the crab fisheries. Id. at 31 and 33.

The crab fisheries experienced a substantial recovery in 1986; 96.5 million pounds of Tanner crab with an ex-vessel value of \$57.9 million, and 12.1 million pounds of King crab with an ex-vessel value of \$47.8 million were harvested.

The Washington fleet's participation in the crab fishery is one of the most significant recent chapters in the 100-year history of Washington vessels harvesting fish from the waters off Alaska. Id. at 13-15. In 1985, a full 92% of seafoods harvested by Washington State fishermen came from waters off Alaska. Id. at 35. The total ex-vessel value of all fish harvested by Washington fishermen was \$400 million, of which \$283 million, or over 70%, came from the waters off Alaska. Id. at 37. Washington fishermen have had and continue to have a vital stake in the fisheries in the U.S. FCZ off Alaska.

The MFCMA recognizes the need for Washington to be represented on the regional council having authority over the fisheries off Alaska and provided for three voting members to come from this state. 16 U.S.C. § 1852(a)(7). In addition, Washington State fishermen are represented on the advisory panel to the Council. If the FMP is withdrawn, the interests of Washington State fishermen will be severely compromised in the management of this fishery. They have no such representation on the Alaska Board of Fisheries or any advisory group to that board. If management of the crab fisheries were abandoned to the State of Alaska, the Washington fishermen dependent on these fisheries would lose the protection available to them under the MFCMA and would be regulated solely at the discretion of state officials necessarily concerned with the needs of their own constituents.

B. The Notice of Proposed Rulemaking and the Supporting Analyses Failed to Discuss all Reasonable Alternates to the Proposed Action.

As mentioned above, NMFS' justification for the proposed action focuses on perceived inflexibilities in the existing FMP. Conspicuously absent from the discussion of alternatives is the most obvious solution: Secretarial amendment of the existing FMP to correct these perceived difficulties. Neither the NPR nor the draft EA or other supporting analysis even considers any alternative falling between the status quo and temporary or permanent abandonment of federal management of the Tanner crab fishery. Failure even to consider this obvious and reasonable alternative is an obvious defect in the Secretary's approach to this problem. It contradicts the Secretary's own guidelines which require consideration of all legitimate alternatives and not mere strawmen when analyzing proposed regulatory action. See NOAA Directive Chapter 21, Section 24 Procedure for Development of Regulations at 22-23.

C. Repeal of the FMP Constitutes Abandonment of the Federal Government's Responsibility and Creates a Federal Management Vacuum.

NMFS and the Regional Council have known at least since January 1986 that the Tanner crab FMP needed modification to eliminate procedural difficulties such as those identified in the notice of proposed rulemaking. See, e.g., Memorandum from Pat Travers dated January 31, 1986. The initial solution adopted by the Council and NMFS was to suspend the FMP on an emergency basis for 90 and later 180 days (through April 29, 1987). The proposed action would perpetuate this bureaucratic cop-out, abandoning regulation to the State of Alaska by default.

The proposed action would abandon federal management of the crab fisheries for at least two years. The proposed crab FMP now in the

initial stages of development will not become effective, at best, until the 1988-89 winter crab fishery. See Crab Management Committee Draft Meeting Summary, March 3-4, 1987, at 4. Thus the proposed action, together with past emergency actions, creates at least a two-year abandonment of federal management of this vital fishery. Moreover, the draft crab plan now under consideration (1) would cover only the Bering Sea/Aleutian Island crab fishery, and (2) would leave most management decisions to the State of Alaska. Thus, NMFS, by the present action, would effectively remove itself from crab management in the EEZ off Alaska for the foreseeable future. This it should not do.

Congress has conferred responsibility upon the regional councils and NMFS to regulate and manage those fisheries that require conservation and management. No one can reasonably deny the need for conservation and management of the crab resources in the FCZ off Alaska. Therefore NMFS must carry out its statutory mandate to ensure the existence of a viable FMP for these fisheries. We have opposed and will continue to oppose any attempt to abandon the regulation of these fisheries to any state. That action is both illegal and bad policy.

D. State Management Is Not an Adequate or Proper Substitute for Federal Management.

The MFCMA was adopted to provide federal management of fisheries resources in the waters lying between 3 and 200 miles off the coasts of the United States. Congress clearly recognized the problems inherent in having these resources managed by individual states responsible only to their parochial constituencies and therefore decided correctly that management of these resources should be regionalized under federal management to 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." 16 U.S.C. 1801(b)(5). This policy is fundamental not only to the fisheries off Alaska, but also to the fisheries off all our other major coastal states, from Washington to California, along the Gulf of Mexico and on the Atlantic Seaboard from Florida to the Gulf of Maine.

The crab fisheries off Alaska are regional fisheries, traditionally exploited by United States fishermen from all of the West Coast states. The MFCMA created a system for managing these fisheries that does not intend that the management of these resources be turned over to a single state, e.g., the state of Alaska.

1. The MFCMA Requires Continued Federal Management of These Fisheries.

The MFCMA clearly and explicitly requires management of the crab fisheries through the council system established by Congress. The MFCMA sets out specific national standards to be followed in the development of fishery management plans and of the regulations to implement these plans. 16 U.S.C. 1851(a). It then requires each Council to prepare an FMP and amendments thereto for "each fishery within its geographic area of authority that requires conservation and management." 16 U.S.C. 1852(h)(1). The term "conservation and management" is statutorily defined to refer to all of the measures "which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining any fishery resource and the marine environment." 16 U.S.C. § 1802(2). No reasonable person could deny that the crab fisheries in the FCZ off Alaska require conservation and management under this definition. Therefore, Congress has affirmatively dictated that these fisheries shall be managed pursuant to a fishery management plan meeting the requirements of the MFCMA.

While 1982 amendments to the MFCMA clarified that the Councils and NMFS are only required to prepare and implement FMP's for fisheries in need of conservation and management, this amendment was not intended to permit these agencies to abdicate their responsibility when conservation and management were in fact required. Indeed, the House Report accompanying the 1982 amendments set out the factors the councils should consider in determining whether an FMP was necessary for a particular fishery. State management is not one of those criteria. The House Report stated that these factors

[i]nclude, but are not limited to, considerations as to: (1) whether or not the fishery is biologically stable enough to justify a fishery management plan; (2) what the value or the potential value of the fishery is; (3) whether fishermen from more than one state participate in, or are planning to participate in, the fishery; (4) whether the resource is found in the FCZ off more than one state; (5) the consistency of different states' regulations if stocks are found in significant numbers both within a number of different states' waters and the FCZ. In short, the Councils will often be required to balance the competing interests of domestic fishermen. The committee believes the Council should make every effort to treat all fishermen in an equitable manner and not trade off the need of one fishery for the desires of another.

H.R. Rep. No. 549, 97th Cong. 2d Sess. 1, 26 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 4320, 4339 (emphasis added).

When these criteria are applied to the management of crab off Alaska, it is clear that the interests of the many fishermen from different jurisdictions participating in this valuable fishery require federal conservation and management. Anything less would be a total abandonment of the entire purpose and policy underlying enactment of the MFCMA.

2. Congress Rejected State Management in Favor of Regional Management

When Congress adopted the MFCMA, it specifically rejected state management of fisheries resources in federal waters. Senator Gravel of Alaska proposed that the MFCMA permit at least the State of Alaska to draw up FMPs for Secretarial approval. Cong. Record (1976) (remarks of Senator Gravel), reprinted in Senate Committee on Commerce, a Legislative History of the Fishery Conservation and Management Act of 1976, 94th Cong., 2d Sess. 471 (1976) [hereinafter cited as FCMA History]. This amendment was stillborn. Instead, Congress emphasized regional management and separation of authority between state and federal management. Thus, it inserted explicit language prohibiting a state from exercising its jurisdiction and authority within virtually all areas of the FCZ. The pertinent language, as most recently amended, reads as follows:

Except as otherwise provided by paragraph (2) [covering three specific situations]¹ a state may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that state.

16 U.S.C. 856(a)(3).

Congress' intention was crystal clear. The Senate Commerce Committee, for example, called for a national management program stating:

It is absolutely vital that a national management program, properly tailored to take account of the variability of the fishery resources, the individuality of the fishermen,

1 The three specific exceptions are certain waters enclosed by the territorial sea, a pocket in Nantucket Sound, and (for regulating species other than crab) certain bays, inlets, straits, sounds and entrances off Southeast Alaska. 16 U.S.C. 1856(a)(2).

the needs of the consumer, and the obligations to the general public, be established.

It then noted:

Fishing within the three-mile limit is regulated by the states. States also manage their residents wherever they go through state licenses and landing laws. However, the state-to-state separation of power is not reflective of the migratory habits of fish stocks, but is due to historic and political factors. As a result, inconsistent regulations have often developed . . . Consequently, management of fishery resources from the national or regional perspective is important to sound conservation practices.

S. Rep. No. 416, 94th Cong. First Sess. 1, _____ (1975), reprinted in FCMA History at 684. The system set up was "carefully structured to ensure that the local interests of the coastal areas, as well as the national interest, will be fully protected and taken into account." Cong. Record (1976) (Remarks of Representative Ruppe), reprinted in FCMA history at 899. This goal cannot be achieved if the Council and NMFS abdicate their responsibility and leave management to the unfettered discretion of the coastal states. This conservation and management authority must be exercised where it should be -- at the Council and NMFS level in conformance with the policies and standards dictated by Congress in the MFCMA.

Congress' intention that these fisheries be federally managed is also manifested in 16 U.S.C. 1854(c)(1)(A), which authorizes the Secretary of Commerce to prepare FMPs and amendments thereto if

the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such plan, if such fishery requires conservation and management.

Thus, Congress explicitly indicated that if any Council failed to carry out its statutory duty with respect to any fishery for which conservation and management was required, then the federal government, acting through the Department of Commerce, should fill that void. Nothing in the statutory scheme even hints that the respective states could or should be authorized to fill this gap.

3. Transfer of Management Jurisdiction to the State Would Violate National Standard 4.

The MFCMA prohibits discrimination against the residents of any state in the regulation and management of fisheries in the U.S. FCZ. National Standard 4 specifically states:

Conservation and management measures shall not discriminate between residents of different states.

16 U.S.C. § 1851(a)(4). This requirement supplements the pre-existing prohibitions on discrimination against residents of different states found in the privileges and immunities clause of the Fourth Amendment to the United States Constitution (U.S. Const. Art. IV, § 2, Cl. 1), and the equal protection clause of the 14th Amendment and its Fifth Amendment counterpart (U.S. Const. Art. XIV and Art. V).

If the Council and NMFS abdicate their responsibility to manage the crab fisheries in the FCZ off Alaska and permit the State of Alaska to fill this vacuum, out of state fishermen will face the strong probability of discrimination contrary both to the MFCMA and to the U.S. Constitution. This concern arises both from Alaska's history of discrimination against non-residents and from the State's previously announced intention to be relieved from federal restraints on its discretionary authority to manage the fisheries off Alaska.

Alaska has a long history of discriminating against non-residents. In the past 9 years alone, in at least five major cases outside the fisheries area, the United States Supreme Court and the Supreme Court of Alaska have struck down Alaskan laws that have illegally discriminated against non-residents. These courts invalidated discriminatory laws and practices that prohibited the hiring of more than 5% non-Alaskans on public construction projects (Robinson v. Frances, 713 P.2d 259 (Alas. 1986)), that granted a preference to Alaska residents for employment connected with the oil and gas industry (Hicklin v. Orbeck, 437 U.S. 518 (1978)), that prohibited non-residents from taking the Alaska bar examination (Sheley v. Alaska Bar Association, 620 P.2d 640 (Alas. 1980)) and from being admitted to the Alaska bar (Noll v. Alaska Bar Association, 649 P.2d 241 (Alas. 1982)), and that distributed state largess to its residents based on length of residency in Alaska (Zobel v. Williams, 457 U.S. 55 (1982)). This is an amazing record for any single state, and especially for a state with one of the smallest populations in the country.

This record parallels Alaska's long-standing discrimination against non-residents with respect to their right to fish in Alaskan waters. A chronicle of this history through the present shows the basis for our concern.

As early as 1924, the United States Supreme Court was faced with the question of whether the Alaska territorial legislature could impose a license fee on nonresidents and residents. Haavik v. Alaska Packers Assoc., 263 U.S. 510 (1924). The Supreme Court decided that this discriminatory license fee did not violate the privileges and immunities clause of the U.S. Constitution since the residents of Alaska were not residents of a "state" and therefore did not enjoy a privilege denied to the residents of other "states". In response, the U.S. Congress amended the White Act, 48 U.S.C. § 220, et. seq., to provide that "no citizen of the United States [shall] be denied the right to take, prepare, cure or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Interior." 48 U.S.C. § 222, 43 Stat. 464 (1924). Nonetheless, Alaskan discrimination against nonresident commercial fishermen continued. Thus, in Freeman v. Smith, 44 F.2d 703 (9th Cir. 1930), cert. denied, 282 U.S. 904 (1931), the Ninth Circuit ruled that a license fee imposed on nonresident fishermen by the Alaska Territorial Legislature which was 250 times as high as that required of Alaska residents violated the nonresidents' right, as U.S. citizens, to take fish from Alaska waters under the White Act.

This pattern of Alaska discrimination against outsiders has continued thereafter. For example, in 1952, the U.S. Supreme Court struck down an Alaska nonresident commercial fishing license fee which was 10 times higher than fees paid by residents, on the grounds that it violated the privileges and immunities clause. Mullaney v. Anderson, 342 U.S. 415 (1952). Ten years later, the U.S. District Court in Alaska invalidated an Alaska statute authorizing the State of Alaska to exclude nonresident commercial salmon fishermen from Alaskan waters when necessary to protect the economic welfare of its residents. Brown v. Anderson, 202 F. Supp. 96 (D. Alas. 1962).

More recently, in a case well known to NMFS and to the Council, Judge Fitzgerald struck down Alaska State Tanner crab regulations that purported to extend into the U.S. FCZ and would have imposed unreasonable restrictions on nonresident fishermen. During the course of his deliberations, he noted that "the state has taken . . . a parochial view on what is allowed under federal law." North Pacific Fishing Vessel Owners' Association v. Sheffield, No. A 84-054 1985 Civil (D. Alas.) (transcript of March 8, 1985 hearing at 27). In that case, Alaska had persisted in enforcing regulations openly and obviously discriminating against large, mobile distant water vessels in the face of the Regional Council's determination that there was no rational basis for adding similar provisions to the Tanner crab FMP.

The State of Alaska has flatly rejected federal oversight of Alaska's management of the crab fisheries off Alaska and has indicated it is not interested in managing them for the benefit of

anyone except Alaskans. This attitude is clearly reflected in former Governor Sheffield's June 20, 1986 letter to Bill Gordon rejecting delegated management of the king crab fishery because of opposition to federal oversight of Alaska's management of that fishery.

Even if Alaska does not engage in direct and overt discrimination against nonresident fishermen, the rulemaking process in that state cannot protect these fishermen. The Alaska Board of Fisheries is institutionally incapable of responding to their concerns. It responds to its constituents -- residents of the State of Alaska -- and provides no effective mechanism by which nonresidents can have representation or any voting power. There have been increasing criticisms of the board procedures even from inside Alaska, causing a number of responsible Alaskans to question whether that board system is inherently flawed so that it cannot meet appropriate standards of fairness and due process even when regulating competing interests of Alaska's own residents.

Based upon the Alaska history of discrimination against nonresidents, the statements of its own officials, and the dictates of national standard 4 and the federal constitution, the Regional Council and NMFS would be derelict in their duty if they were to abdicate their responsibility for management of the crab fisheries in the U.S. FCZ off Alaska and to turn it over to an agency of a state with both a clear record of discrimination against non-Alaskans and an avowed intention of managing the fishery for the benefit of its own citizens.

4. Potential Discrimination Against Non-Alaskans Cannot Be Effectively Cured on a Real Time Basis.

NMFS has claimed that any "perceived state discrimination against non-Alaskans participating in the fishery" resulting from state management can be cured." See, e.g., 51 Fed. Reg. at 40028 (Nov. 4, 1986) implementing the first emergency rule suspending the FMP, and draft EA at 16, both of which suggest both emergency action by NMFS and the regional Council, and judicial remedies. This perception does not square with reality.

Many of the decisions to be made in crab management will, by necessity, be implemented immediately. In-season adjustments in particular will often be made after the vessels are on the grounds fishing. There is little prospect that out-of-state fishermen could get timely relief from discriminatory actions either from the federal bureaucracy or from the court system. Thus, they would be relegated to wholly inadequate and untimely after-the-fact relief.

The problem of timely relief is far from theoretical. The drafters of the proposed crab FMP that will eventually replace the Tanner crab FMP in the Bering Sea are now wrestling with this very

problem even within the context of an FMP. That proposed FMP would abandon considerable management authority to the State of Alaska. At the last meeting of the Crab Committee on March 1987, the committee members expressed substantial concerns over this problem. The draft meeting summary stated:

The committee discussed the role of NMFS and the Council in participating in the [Alaska Board of Fisheries] process. The main concerns were that proposals be made available to the Council with sufficient time for review and that NMFS and Council representatives be allowed to participate and advise during the Board meetings.

. . . .

The committee voiced concern that a clear road map be laid out on appeals procedures, particularly whether all state appeals would have to be exhausted before appealing through the federal system. One approach would be to require a serial appeals procedure for preseason board actions when more time is available, but allow for parallel appeals through state and federal systems for in-season adjustments.

NMFS indicated that a formal appeals procedure would need to be in the FMP. However, interested parties should give considerable thought to how NMFS, the Council, and the state should interact in decision making and appeals procedures.

Draft Minutes at 4.

There is even less prospect for providing adequate relief to out-of-state fishermen in the absence of protection built into an FMP.

E. National Policy Concerns.

When Congress determined that the United States should extend its fisheries conservation and management authority into the FCZ, it opted to create orderly management where none existed before. It chose management of resources at the regional level under consistent national guidelines. Nothing could defeat this purpose more quickly than a shift to management of these resources by each of the coastal states, without regard to the interests of others in the region affected by the policies of these coastal states.

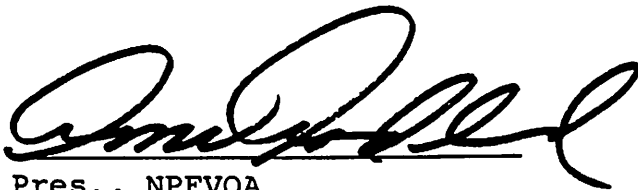
The evil of permitting individual states to exercise extraterritorial jurisdiction into the FCZ has surfaced in many areas. For example, Rhode Island's trip limit restrictions on yellowtail flounder without regard to the area of capture have conflicted with federal regulation of that fishery in the FCZ as well as regulations of other states in the region (State v. Sterling, 448 A.2d 785 (R.I. 1982)); Florida restrictions to shrimp fishing outside the territorial waters have conflicted with federal management under the MFCMA (Tingley v. Alley, 397 So. 2d 1166 (Fla. Ct. App. 1981)); and a Florida ban on purse seining by state vessels wherever situated has conflicted with federal regulations permitting purse seining in the FCZ (Southeastern Fisheries Association v. Livings, No. 83-524-Civ-SMA (S.D. Fla. 1983)).

The rationale for abandoning management of the crab fisheries off Alaska strikes at the heart of the MFCMA. It would set a precedent for turning over groundfish regulation to the state of Alaska, notwithstanding the strong interests of non-Alaskans in the management and conservation of that resource. It would set a precedent for regulation of salmon in the FCZ by individual states like California, Washington and Alaska, notwithstanding the interests of the other jurisdictions to which those fish migrate during their life cycle. It would set a precedent for various coastal states in the Gulf of Mexico to carve up the FCZ into individual enclaves for state regulation of shrimp fishermen. It would permit individual New England states to claim they should regulate the fisheries in the Gulf of Maine.

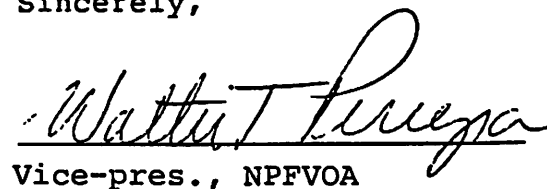
E. Conclusion.

The State of Alaska has announced that either it will manage the crab fisheries in the FCZ off Alaska as it sees fit without the restraints imposed by the MFCMA or it does not want to manage them at all. The first of these choices is contrary to the letter, the spirit, the purpose and the intent of the MFCMA. Left with this pronouncement, the Council and NMFS can and must do the task Congress assigned to them -- manage the crab fisheries for the benefit of all pursuant to an appropriate FMP. The Secretary should adopt an amendment to the present FMP that would cure the specific perceived problems with the existing FMP and should cease its efforts to abandon that FMP and federal management of this valuable fishery.

Sincerely,



Pres., NPFVOA



Vice-pres., NPFVOA

Mr. Robert W. McVey
April 20, 1987
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Thom Smith
Executive Director, NPFVOA

James S. ...
Highliners Association

R. Barry Foster (SF)
Midwater Trawlers' Ass'n

Gary A. Baker
Arctic Alaska Seafoods

Edward P. Evans
Alaska Factory Trawlers Ass'n

J. Chris Hansen
Coalition for Open Ocean Fisheries

Peter Block (NCH)
Northern Deep Sea Fisheries

Robert A. ...
Westward Trawlers Inc.

Ed ...
Fishing Vessel Owners' Association

H. H. Larkin
Marine Resources Company

Sam O. Gille
Glacier Fish Company

cc: Dr. Anthony J. Calio, Under Secretary and Administrator, NOAA
Dr. William E. Evans, Assistant Administrator, NMFS
Mr. James Campbell, Chairman, NPFMC

May 11, 1987

Dr. Dana Schmidt
Research Supervisor
ADF&G
Box 686
Kodiak AK 99615

Dear Dana:

Thanks for your letter of April 27, 1987 concerning the Leslie analysis of the 1987 opilio fishery. I found your extension of my results interesting. I suppose many different scenarios might be extrapolated beyond the data at hand, and much speculation could be generated regarding the possible course of the CPUE pattern had the fishery in the Pribilofs continued. I suspect that if your "worse case" scenario had followed the generally linear pattern exhibited by the actual data, the fishery would have terminated in short order because of the rapid decline in CPUE.

You have suggested that the "concave downward" CPUE paths you project are due to the fishery changing to new locations or to increasing average soak time, thus artificially holding up weekly CPUE, and giving a fishery estimate of stock that is higher than the survey estimate. In figure 1 I have calculated a hypothetical line that approximates the survey estimate of abundance and requires that catchability be twice as high as what was observed from the fishery data. From this, it doesn't seem very likely that the fleet would be able to maintain their CPUE to this extent over the course of 12 weeks by finding new grounds and new crab schools unless the crabs were actually in high abundance. Further, it would take a significant increasing trend in soak time over the 12-week period to maintain CPUE artificially. If this were occurring, you would expect catch per landing and/or landings per week to show a declining trend, since potlifts per trip would decline or trip length would increase with such a trend in soak time. Figure 2 indicates that this is not happening.

It is not my contention that the Leslie method gives an estimate superior to the survey. It merely has the potential for providing a check on the survey numbers. When two or more approaches to the estimate agree, it gives us confidence that we are in the right ball park. When the fishery data, while by no means perfect but certainly representing a great deal of on-the-grounds information, is at odds with the survey as it has been recently, one tends to have less confidence in the survey information. It also points out the need to examine both the

survey and fishery data from several different angles in order to improve our assessment capability. I look forward to discussing these matters more thoroughly at our June Tanner crab management meeting.

Best regards,

J. E. Reeves
Fishery Research Biologist

cc:Marasco
Nicholson
Nippes
Griffin
Donaldson
Kruse
Otto
Baglin

C. OPILIO SOUTH OF 58

86/87 LESLIE

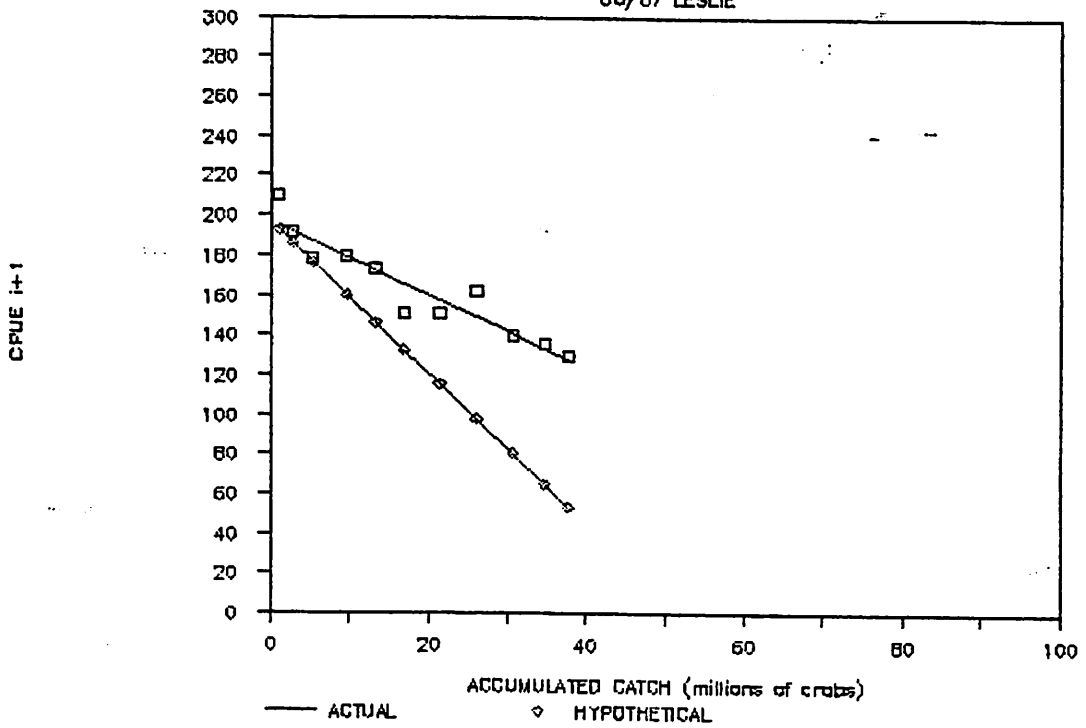


FIG. 1

C. OPILIO SOUTH OF 58

86/87 LESLIE

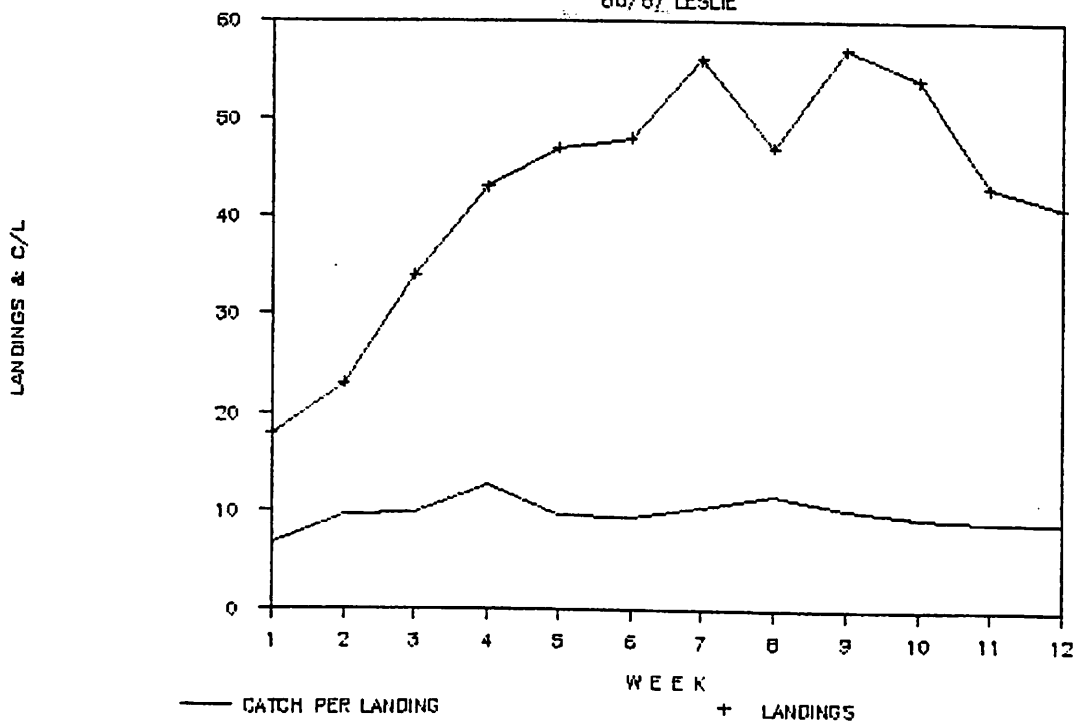


FIG. 2

MEMORANDUM

State of Alaska

Dr. Jerry Reeves
Fishery Research Biologist
U.S. Dept. of Commerce
NOAA-NMFS
Northwest and Alaska Fisheries Center
7600 Sand Point Way Northeast
BIN C15700, Building 4
Seattle, Washington 98115-0070

DATE: April 27, 1987

File No. LESOPIII.PRN

Dear Jerry,

I appreciated getting your material on *C. opilio* estimates for the Bering Sea. I took the data in your letter and cranked out some alternative calculations using different assumptions about catchability. These alternative models are illustrated in the accompanying graph. I guess that I would conclude from this information that insufficient data are available to indicate whether catchability is constant over time as the Leslie method assumes. The r squared values varied from .89 to .85 with the alternative transforms of the CPUE data (this process implies non linearity with decreasing cpue).

Major differences in the population estimate result from these alternative models without any significant change in fit to the original data.

In examining the Leslie estimates that Bob Otto published for Bering Sea red king crab, the last three data points appear to consistently provide an increased slope over the initial data points. In Kodiak this effect is even more pronounced. However, Bob's data with king crab indicate survey results consistently provided higher estimates than Leslie Method estimates, suggesting portions of the stock were not subjected to the commercial fishery. As this is opposite to the results we are obtaining with *C. opilio*, it leaves us in the quandary as to whether survey q is different between the species, or that the Leslie method assumptions are violated differently for each of the species.

All of this doesn't appear to provide any great insights as to what the population actually is. Rapidly declining CPUE is probably a good in-season indicator that fishing should be curtailed in an area, despite failure to reach or approach a guideline harvest level. I am not convinced however, that in-season Leslie estimates are superior to pre-season survey estimates, particularly if we can obtain adequate data or an alternative analysis to address the survey q value.

This method of analysis may have some value if we can obtain more exacting information on effort, such as soak time, or using much more

April 27, 1967

Page 2.

rigidly defined areas. In any event it should be continued to be performed as I believe it is a very useful comparison tool and can be used by the managers as another piece of information in determining the impact of the harvests on existing stocks.

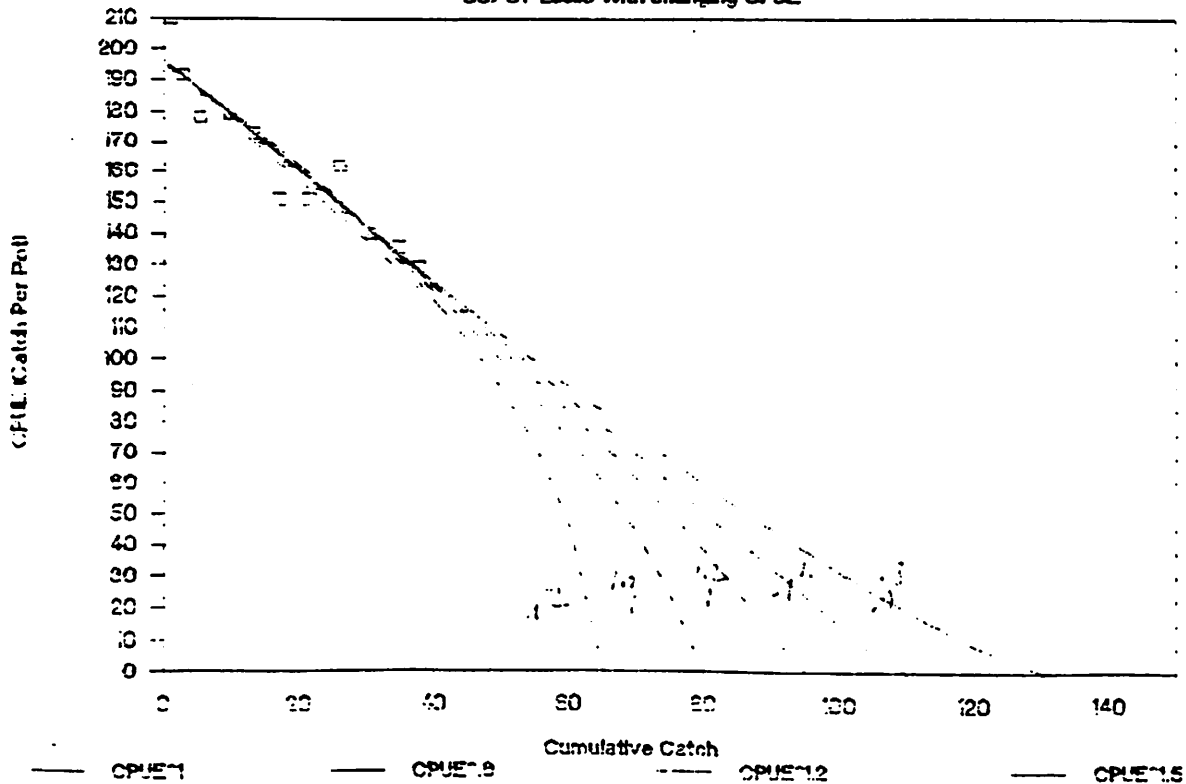
As I have looked at this information only briefly, please let me know if I have committed some grievous error in my thinking and in the application of the transform to the Leslie method.

Sincerely,

Dana Schmidt
Dana Schmidt
Division of Commercial Fisheries
Westward Region
Kodiak

cc: L. Nicholson
B. Nippes
K. Griffin
G. Kruse
R. Otto
R. Baglin
B. Donaldson
R. Marascot

C. optio South of 58
66/67 Leslie with changing CPUE



The above graph represents the same data as in your memo with q being dependent upon stock abundance. CPUE was transformed for the regression with a power transform of .8, 1.2, 1.5, & 2. The q^2 transform population estimate is compared below with that using the standard model.

Millions of Crab	Million lbs.	Latest GHL using .53
108.3608	134.3674	77.93312
Leslie Method with changing q (CPUE q^2)		
Millions of Crab	Million lbs.	Latest GHL using .53
63.69275	73.97901	45.80762

There are no appreciable differences in fit to the original data of these alternative models.

Although I don't have the data for previous years for comparison of the *C. opilio* trends over time, the experience the managers relate in CPUE indicate that the fleet can maintain flat CPUE's over time by moving to new locations and increasing soak time of the pot gear. The flat effect followed by a rapid decline is typical for our Kodiak Tanner (*C. bairdi*) and King Crab fisheries. This reflects a general increase in q with decreasing populations.

R. Marasco



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest and Alaska Fisheries Center
Resource Ecology and Fisheries
Management Division
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April 17, 1987

F/NWC2:JR2.5

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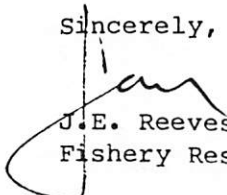
Dear Dana:

Enclosed is my analysis of data provided to me by Ken Griffin on the 1986/87 C. opilio fishery, based on the Leslie CPUE model. Table 1 shows the data on a weekly basis and Table 2 and Figure 1 show the results of the regression analysis. The guideline harvest midpoint based on this analysis is 78 million pounds, compared to a survey-based midpoint estimate of 41 million pounds (range: 27-55 million pounds). Thus it appears to me that we are still having problems with underestimation of the opilio stock based on the survey, although not as severe as last year. The CPUE data exhibit quite a consistent decline in the classic Leslie manner, resulting in a relatively high R squared of .88 and suggesting that catchability has been reasonably stable.

I interpret the discrepancy between the survey and fishery estimates of population as significant, and conclude that this season's removal south of 58 degrees could have been considerably larger without causing biological concern. In fact, I suspect that fleet economics would have come into play before a GHL of 78 million pounds was reached since attainment of this GHL would require the fleet to operate on CPUE's below 100, with an endpoint in the 80-90 crab/pot range. It will be interesting to see what the fishery data in the Northern district show us in this regard.

At the March Shellfish Staff meeting the problem of how to use fishery CPUE and other data consistently for management decisions was raised. It strikes me that in situations where it fits the data, a Leslie-type approach might be useful in objectively assessing season endpoints. As with any other method to be used, it is not without problems. However, my experience using the methodology with crab stocks leads me to believe it should be included in our stock assessment tool bag.

Sincerely,


J.E. Reeves
Fishery Research Biologist

Enclosures

cc: F/NWC2 - R. Marasco
PS2 - M. Nicholson
ADFG - W. Nippes
ADFG - K. Griffin

F/NWRXt - ^{G.} P. Kruse
F/NWC11 - R. Otto
ADFG - R. Baglin



Table 1 . Statistics from the Bering Sea *C. opilio* fishery, south of 58, 1986/87 season, used for Leslie population estimates.

Week ending	Landings	Catch (mln.lbs.)	CPUE (i)	Average weight	Accumulat.		CPUE (i+1)
					Catch (millions)	Catch (millions)	
25-Jan-87	18	1.2	186	1.20	1.00	1.00	210
1-Feb-87	23	2.2	210	1.23	1.79	2.79	192
8-Feb-87	34	3.3	192	1.30	2.54	5.33	178
15-Feb-87	43	5.4	178	1.25	4.32	9.65	179
22-Feb-87	47	4.5	179	1.24	3.63	13.28	173
1-Mar-87	48	4.5	173	1.24	3.63	16.91	151
8-Mar-87	55	5.8	151	1.30	4.46	21.37	151
15-Mar-87	47	5.5	151	1.20	4.58	25.95	162
22-Mar-87	57	5.8	162	1.25	4.64	30.59	140
29-Mar-87	54	5.1	140	1.24	4.11	34.70	136
5-Apr-87	43	3.9	136	1.31	2.98	37.68	130
12-Apr-87	41	3.7	130	1.15	3.22	40.90	
Total	511	50.9					
Average			166	1.24			

Table 2. Results of Leslie model CPUE analysis of the *C. opilio* fishery data from the Bering Sea, south of 58 degrees, 1986/87 season.

Leslie Estimate

Million - Crabs	Million Lbs.	Latest GHL est.	Latest u
108.37	134.65	78.1	0.76

Approx 95CI

126.77	plus or	
89.97	minus	17%

Regression Output:

Constant	196.6913
Std Err of Y Est	9.110169
R Squared	0.880670
No. of Observations	11
Degrees of Freedom	9
X Coefficient(s)	-1.81498
Std Err of Coef.	0.222698

C. OPILIO SOUTH OF 58

86/87 LESLIE

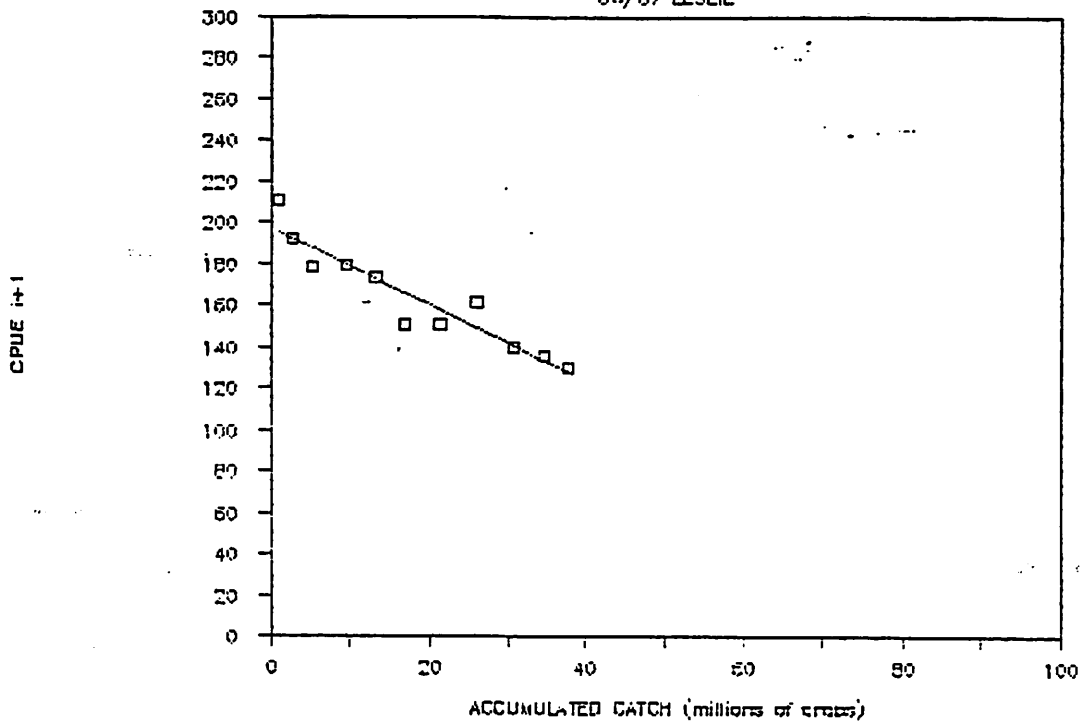


Figure 1. Fit of the Leslie CPUE model to data from the 1986/87 C. opilio fishery in the Bering Sea, south of 58 degrees.