

AGENDA

Joint North Pacific Council/Alaska Board of Fisheries Meeting
Wednesday, December 8, 1981

- A. Opening Remarks by Chairmen Clem Tillion and Nick Szabo
- B. Herring
 - 1. Staff Reports
 - 2. Public Testimony
 - 3. Council/Board Discussion
- C. King Crab
 - 1. Schedule joint public hearing for Seattle
 - 2. Progress report on FMP
- D. Salmon
 - 1. Update on Confederated Tribes v. Baldrige
 - 2. Develop Agenda for joint meeting in January

North Pacific Fishery Management Council

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

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November 19, 1981

DRAFT AGENDA

45th Plenary Session NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

December 7-9, 1981
Westward Hilton Hotel
Anchorage, Alaska

The North Pacific Fishery Management Council will convene at 9 a.m. on Monday, December 7, in the Alaska Room of the Westward Hilton Hotel, Anchorage, Alaska, and will adjourn about 5 p.m. on Wednesday, December 9, 1981. On Tuesday and Wednesday the Council will meet jointly with the Alaska Board of Fisheries to discuss fisheries issues of mutual concern. In particular the Council and Board will hear staff reports and public testimony on the herring fishery in western Alaska.

The SSC will convene the week before at 1:30 p.m. on Wednesday, December 2, in the Council's conference room and adjourn by 5 p.m. on Thursday, December 3.

The Advisory Panel will meet in the Alaska Room of the Westward Hilton from 9 a.m. to 5 p.m. on Sunday, December 6.

All meetings are open to the public.

INFORMATION ON THE OPPORTUNITY FOR PUBLIC COMMENT

Pre-registration will be required for all public comments which pertain to a specific agenda item. Pre-registration is accomplished by informing the Agenda Clerk early in the meeting of the agenda item to be addressed and the time required. Public comments may be scheduled for C. OLD BUSINESS, D. NEW BUSINESS, and E. FISHERY MANAGEMENT PLANS. There will be a general comment period, AGENDA G., scheduled for late afternoon on Wednesday for testimony on matters not on the current agenda.

A G E N D A

A. CALL TO ORDER AND APPROVAL OF AGENDA AND MINUTES OF THE PREVIOUS MEETING

B. SPECIAL REPORTS

B-1 Executive Director's Report

B-2 Domestic Fisheries Report by Alaska Department of Fish & Game

B-3 Foreign Fisheries Report by National Marine Fisheries Service

B-4 Enforcement and Surveillance Report by U.S. Coast Guard

B-5 Joint Venture Operations

- (a) Marine Resources Company
- (b) Korea/Fish Producers Associates
- (c) Nordstern/U.S.
- (d) Taiwan/Pribilof-Highly SeaProducts, Inc.
- (e) Polish/Mrs. Paul's Kitchens

B-6 AP and SSC Reports on Non-Agenda Items

C. OLD BUSINESS

C-1 King and Tanner Crab Observer Program

C-2 Update Council Workgroups

C-3 Free Port Status

C-4 Foreign Processing in State Waters

C-5 Other Old Business as Appropriate

D. NEW BUSINESS

D-1 Review of Permit Applications *+ Korean + FRG*

D-2 Revisions to SOPPs

D-3 Format for Renegotiated GIFA's

D-4 Other New Business as Appropriate

E. FISHERY MANAGEMENT PLANS

E-1 Salmon FMP

Reports on the Salmon Modeling Workshop, Salmon Inter-Council activities, and the case of Confederated Tribes vs. Baldrige. Treaty tribe representative nominated for PDT.

E-2 Herring FMP

An update on the FMP revision will be given and management methods will be discussed with the Board.

E-3 King Crab FMP

Council/Board discussion on and scheduling of a joint Council/Board public hearing in Seattle prior to the March meeting. Progress report on the FMP and scheduling of further action.

E-4 Tanner Crab FMP

Problems with OMB over reporting requirements of Amendment #6. General discussion on pot storage.

E-5 Gulf of Alaska Groundfish FMP

Final Council action on Amendment #11 may have to be postponed until January because of delays in some background documents. Public testimony on Amendment #11 will be taken. The Council wants testimony on DAH (for both U.S. processors and joint ventures) and may have to take action to amend it for 1982. Schedule rewrite of FMP.

E-6 Bering Sea/Aleutian Islands Groundfish FMP

The Council, after taking testimony on U.S. processor and joint venture needs, may have to amend DAH for 1982. General discussion of Amendment #1 and development of U.S. groundfish industry.

F. CONTRACTS, PROPOSALS, AND FINANCIAL REPORTS

F-1 Status of Contracts and RFP's

- (a) Report on Status of Existing Contracts
- (b) Final Approval of Contract 80-4, "To Expand and Enhance the Domestic Commercial Fisheries Catch Data Reporting System Off Alaska"
- (c) RFP for Halibut Limited Entry Study

F-2 Financial Status Report

G. PUBLIC COMMENTS

H. CHAIRMAN'S CLOSING COMMENTS AND ADJOURNMENT

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MINUTES

43rd Plenary Session NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

September 10-11, 1981
Elks Hall
Kodiak, Alaska

The North Pacific Fishery Management Council and the Alaska Board of Fisheries met jointly on September 10-11, 1981 at the Elks Hall in Kodiak, Alaska. Neither the Scientific and Statistical Committee nor the Advisory Panel held meetings in conjunction with the Kodiak Council meeting.

Council members, Board of Fisheries members, Scientific and Statistical Committee and Advisory Panel members, and general public in attendance are listed below.

Council

Clement V. Tillion, Chairman	Donald Bevan
Harold E. Lokken, Vice-Chairman	John P. Harville
Robert Mace, for John Donaldson	Robert W. McVey
Gene DiDonato, for Rolland Schmitt	Don Collinsworth, for
CDR Peter Busick, for RADM Richard Knapp	Ron Skoog

Alaska Board of Fisheries

Nick Szabo, Chairman	Herman Schroeder
Jimmy Huntington	Griffin Quinton
Harry Sundberg	

Scientific and Statistical Committee

Donald Rosenberg, Chairman

Advisory Panel

A. W. "Bud" Boddy, Vice-Chairman	Raymond P. Lewis
Lewis Schnaper	Rick Lauber
Richard Goldsmith	Jeffrey R. Stephan

Support Staff

Guy Thornburgh, ADF&G	Bob Otto, NMFS
Ray Baglin, NMFS	Jack Lechner, ADF&G
Reva Lafavour, ADF&G	Bill Osborne, NMFS
Dave Flannagan, NMFS	Therese Arnetta, NMFS
Kristi L. Stall, NMFS	Milstead Zahn, ABoF
Kris Hauschild, ABoF	LCDR S. W. Vagts, USCG
Bob Larson, ABoF	Lt. Jack W. Jordan, DPS, FWP
Captain Robert Lockman, DPS, FWP	

Council Staff

Jim H. Branson, Executive Director	Peggy McCalment
Clarence Pautzke, Deputy Director	Judy Willoughby
Jim Glock	Jim Richardson
Steve Davis	

General Public

Jude Henzler, RuralCap, Anchorage
Blake W. Kinnear, M/V LIN-J, Kodiak
Allan Adasiak, Kodiak Community College, Kodiak
Jon Newstrom, KMXJ Radio, Kodiak
Dave Herrnstein, Fisherman, Kodiak
George Johnson, Fisherman, Kodiak
Jeanne Fielder, UFMA, Kodiak
Marcy Jones, Fisherman, Kodiak
Chris Blackburn, Alaska Fishermen's Journal, Kodiak
Fred Kirkes, APL, Kodiak
G. T. Simmons, Alaska Packers Association, Kodiak
Melvin Morgulis, Fisherman, Kodiak

A. CALL TO ORDER AND APPROVAL OF AGENDA

The meeting was called to order at 9:20 a.m. by Chairman Clem Tillion. Chairman Tillion welcomed the Board of Fisheries and public in attendance. Board Chairman Nick Szabo introduced Harry Sundberg of Wrangell, newly appointed Board of Fisheries member.

Chairman Tillion announced that Harold Lokken and Keith Specking were appointed by the Secretary of Commerce for three-year terms as voting Council members.

The Council asked the Executive Director to write a letter of appreciation to former Council member Charles Meacham for his work with the Council over the last three years.

B. SPECIAL REPORTS

B-1 Executive Director's Report

The Executive Director reported that the House Subcommittee on Fisheries and Wildlife Conservation and the Environment has

scheduled oversight hearings on the Magnuson Act for September 24-25 in Washington, D.C. These dates conflict with the Anchorage Council meeting. A memorandum outlining amendments proposed by the Subcommittee staff was distributed to Council members and is made a part of these Minutes as Appendix I. Because of the importance of the proposed amendments, the Executive Director suggested that the Council appoint one person to give oral testimony and answer questions of the Subcommittee at the hearings. *It was the consensus of the Council that Donald Bevan should represent the North Pacific Council at the oversight hearings. The Executive Director was instructed to prepare written testimony for submission to the Subcommittee by September 18.*

A team from Central Office-NMFS will conduct a workshop on the Draft National Standard Guidelines for Council, SSC and AP members, and interested public on Saturday, September 26, 1981, in the Council conference room. Daphne White, Margaret Frailey, and Mary Thompson from the Central Office will lead the workshop.

B-2 Report on West Coast Salmon Situation

Mike Stanley, NOAA General Counsel, gave his interpretation of the Court's August 4 decision in the case Confederated Tribes vs. Baldrige. In that decision Judge Craig ordered a 90-day period for reconsideration (ending November 6, 1981) in which the parties involved were instructed to try to find some way to get more fish back into the Columbia River. The Court questioned the adequacy of the last several years' cutbacks on the Alaska troll fishery, but denied closure of the ocean fisheries because he felt it would not accomplish anything major this year. The order of priority stated in the Decision was treaty obligations first, then conservation of the resource, and then socioeconomic impacts on non-treaty fishermen. Mike Stanley, however, felt that the Judge may have mis-stated the priorities and actually meant to say conservation first, treaty obligations second, and socioeconomic impacts on non-treaty fishermen third.

Mr. Stanley said that because there is no way that 1981 troll fishery data can be available by the November 6 deadline, an extension of time will be sought. In the meantime, Bert Larkins of NMFS-Northwest Region and Bob McVey, Alaska Region, are preparing a response to the Court on behalf of Secretary Baldrige.

On August 24 the Confederated Tribes filed a Complaint with the Court alleging that Washington and Oregon had made no provision for a Columbia River treaty fishery this year. In response to that Complaint, Judge Craig essentially removed management authority from Washington and Oregon by letting the Indians' biologists set the season and optimum yield. Bob Mace explained that the Washington Department of Fisheries decided to limit the Columbia River Indian fishery for conservation reasons. Oregon,

on the other hand, felt that the treaty obligated them to let the Indians fish in the three major pools. Because the question was unresolved, it went to the hands of the Court.

Questions arose on the Council's obligation to the treaty. Mike Stanley said that the treaty obligations may, in fact, be binding on all citizens of the United States. Canada's role in curtailing harvests of upper Columbia River bright stocks was also discussed. Mr. Stanley suggested that the Council may want to attempt to quantify the effects of transfer through Canada to show the futility of taking extreme measures in the Alaska troll fishery.

Bob McVey said that he and Bert Larkins are not yet able to offer management alternatives to the Court, and have solicited technical assistance from the agencies involved. ADF&G has designated Mel Seibel as technical representative and George Utermohle as the Department's liaison. McVey and Larkins have also met with representatives of Alaska Trollers Association to discuss the situation. An informal group has been established to examine the Washington Department of Fisheries computer model to attempt to understand exactly how it works and learn its limitations and sensitivities.

Mr. McVey suggested that time/area closures may be the most feasible way to selectively save Columbia River brights. Such closures would transfer fishing effort to other stocks. The trollers understand the importance of offering constructive alternatives to the Judge and are willing to consider time/area closures.

Gene DiDonato said that WDF is concerned about the timing for the Board of Fisheries' consideration of troll fishery regulations. He urged the Board and Council to delay action on final regulations until complete assessment of the 1981 fishery can be made.

Mike Stanley said that as a result of the pending Court decision the Council may have no real control of the 1982 troll fishery except for measures which do not affect fish from southern states.

Public Testimony

Lewis Schnaper, consultant representing Alaska Trollers Legal Trust, testified in support of challenging, rather than complying with, Judge Craig's directive in the August 4 Order. He said that giving up just one fish above the level required for conservation purposes would give Judge Craig the right to tell the Secretary of Commerce what to do concerning the fishery off Alaska. Mr. Schnaper said that if Alaska does not challenge the case, the troll fishery will be snuffed out anyway, little by little. And if Alaska does challenge the case and loses it all, at least we can say we gave it our best shot.

Council Action

Bob McVey asked the Council to appoint a small workgroup to help coordinate Council input for the response to the Court. The North Pacific members of the existing Inter-Council Salmon Coordinating Committee (Ron Skoog, Joe Demmert, and Don Bevan) were assigned to work with Mr. McVey and Mr. Larkins on the response to the Court.

Don Collinsworth moved that the following statement be adopted as the Council's position on its obligation to the Court in the Confederated Tribes vs. Baldrige; seconded by Don Bevan.

The North Pacific Fishery Management Council affirms its interest in participating to the extent appropriate in responding to Judge Craig's August 4 Order that management of the ocean fishery off Southeast Alaska be reexamined to find ways to increase escapement of western North American chinook stocks for conservation purposes; further, the Council requests a reasonable extension of time for final compliance with that Order so the data from the 1981 season can be fully evaluated as the basis for equitable and effective management decisions. The Council is working closely with the Alaska Board of Fisheries to this end and will meet with them the first week of January, 1982, at which time the necessary data will be available from the Alaska Department of Fish and Game to complete evaluation of this question.

The motion was adopted without objection.

C. PUBLIC HEARING ON KING CRAB FISHERY MANAGEMENT PLAN

The Council and Board heard testimony on Thursday morning, September 10, on Draft #11 of the Bering Sea/Aleutian Island King Crab Fishery Management Plan. A summary of the hearing is made a part of these Minutes as Appendix II.

D. DISCUSSION OF DRAFT KING CRAB FISHERY MANAGEMENT PLAN

Joint Statement of Principles

A revised Joint Statement of Principles dated September 8, 1981, made a part of these Minutes as Appendix III, was presented to the Council and Board for review and adoption. Revisions had been made to the document to more accurately reflect the current situation and did not substantially alter the text.

Don Bevan moved that the Council approve the Joint Statement of Principles dated September 8, 1981; seconded by Don Collinsworth. The vote was postponed until Friday, September 11, because the Council had not had ample time to review the revised Joint Statement of Principles.

Upon roll call vote, the motion passed 5 to 2 with Harold Lokken and Gene DiDonato in objection.

The Board of Fisheries adopted the revised Joint Statement of Principles, noting that the "no plan" option would be simpler and least burdensome to the State.

Council/Board Discussions

The Council and Board discussed differences in management strategies between the two bodies and various problems with mechanical aspects of management of the king crab fishery and other fisheries of mutual interest.

The Council and Board discussed the Board's favorable reconsideration of a second season in the Kodiak area for 7½ inch crabs and its denial of the petition by the North Pacific Fishing Vessel Owners Association, the Alaska Crab Institute, and the Alaska Marketing Association for a higher-than-normal exploitation rate to reduce the economic hardship caused by setting quotas based on NMFS's abundance estimates. The Board's justification for their negative finding on the petition stemmed from their hesitation to trust "largely untested" scientific information on the higher exploitation rate. They chose to continue with a .6 exploitation rate because previous experience with this harvest level has not demonstrated potential harm to crab stocks.

Mike Rubenstein of the State Attorney General's Office in Washington, D.C. briefed the Council on his interpretation of the legal ramifications of each of the four available options for the King Crab FMP (no plan, state regulation under FMP by delegation, state and federal regulations under an FMP, or "federalized" regulations under an FMP). A copy of his report is made a part of these Minutes as Appendix IV. The Council and Board discussed the positive and negative aspects of approvability and enforceability of regulations promulgated under each of the four options.

Harold Lokken asked that the record reflect his opposition to the exclusion of Kodiak and the Peninsula from the plan.

Mike Rubenstein suggested that the Council may want to include a discussion on the history of the Kodiak king crab fishery as possible justification for exclusion of Kodiak and the Peninsula from the plan. He felt that including such a section may answer some of the Central Office's many questions on the reasons for the plan covering only the Bering Sea fishery.

Mike Rubenstein suggested that the Council may want to send a small workgroup to Washington, D.C. after the Central Office has made its preliminary review of the package to answer questions and attempt to resolve any difficulties which may arise.

Council Action

It was the consensus of the Council that Draft #11 of the Bering Sea/Aleutian Islands King Crab Fishery Management Plan be revised to conform with Option Iib, "federalized" state regulations under

the framework FMP, with the provision that state regulations will not be federalized until the need arises for protection of the fishery. The Council decided not to include a section detailing the history of the Kodiak fishery at this time. After final Council approval of the revised Draft #11 at the September 24-25 Council meeting, the package will be reviewed by the NMFS Regional Office. Changes suggested by the Region will be incorporated into the package and sent to Washington, D.C. to begin Secretarial review. After initial review by the Central Office staff, a small workgroup will meet with Central Office reviewers in Washington, D.C. to answer questions, clarify the Council's position, and consider changes suggested by the reviewers.

E. CHAIRMAN'S CLOSING COMMENTS AND ADJOURNMENT

Discussion on Possible Winter Herring Fishery

Chairman Tillion said that a surplus of herring exists and the Council must consider at its September 24-25 meeting in Anchorage a request for a joint venture winter herring fishery. Failure to utilize the surplus in a domestic fishery could result in allocation of the surplus to a foreign fishery. Board Chairman Szabo said that because data on the Bering Sea herring fishery were incomplete and biomass estimates are far from final, the Board would not be prepared to respond until the December Council/Board meeting. He did suggest, however, that perhaps Ken Parker may be able to furnish preliminary information to the Council at its September 24-25 meeting.

Public Testimony

Oscar Dyson, Kodiak fisherman, said that several management errors may have been committed in the Kodiak spring herring fishery. He felt that the 7 to 8-year age class was not harvested and said that the herring were allowed to spawn before conducting any fishery on them. He said the alleged "missing" 4-year class was there although they had not been observed in the aerial surveys.

Mr. Dyson urged the Board to consider methods of stock assessment other than aerial surveys and indicated that domestic fishermen would want to harvest any available surplus rather than allowing it to be allocated to a foreign fishery.

There being no further business to come before the Council and Board of Fisheries, the 43rd plenary session of the North Pacific Fishery Management Council adjourned at 3:05 p.m.

North Pacific Fishery Management Council

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MEMORANDUM

TO: Council Members

FROM: Jim H. Branson
Executive Director

DATE: September 9, 1981

SUBJECT: Proposed MFCMA Amendments

Bill McKenzie, now on the staff of the House Subcommittee for Fisheries, Wildlife Conservation and the Environment, called yesterday with a preview of what the Subcommittee is doing toward amending the MFCMA. These are the areas on which they would like testimony at the oversight hearings in Washington on September 24-25.

The Subcommittee staff is drafting language for amendments that will cover the following points:

1. Remove Council operations from the Federal Advisory Committee Act (FACA) requirements, but lay out guidelines that will insure public participation and timely notice of Council activities.
2. Allow Councils to develop regulations for the collection of data prior to the development and implementation of an FMP. A Council would be able to collect data to decide whether or not an FMP was necessary and for information needed for the development of an FMP if it was decided that it was.
3. Recognize that an FMP is not necessary for every fishery and lay down guidelines so a Council would be able to make a decision on whether or not an FMP was needed.
4. Give the Secretary of Commerce authority to develop an FMP if the concerned Council requests the Secretary to do so.
5. Add the Northern Marianas and certain other U.S. territories and possessions in the western Pacific to the jurisdiction of the Western Pacific Council.
6. Allow Councils to hold public hearings outside their geographical area of authority.

7. Give the Secretary authorization to seize the value of under-reported fish from a violator rather than the fish itself.
8. Allow recreational fisheries by foreign nationals not party to a GIFA under regulations promulgated by the Secretary of Commerce and the Secretary of State in the FCZ and by the individual state in its own waters.
9. Delete the requirement that permit applications from foreign vessels be sent to Congress.
10. Modify National Standard 1 so that conservation and management measures shall prevent overfishing while allowing on a continuing basis the full utilization of optimum yield from each fishery by United States harvesters.
11. Make it clear that guidelines established by the Secretary based on the National Standards to assist in the development of fishery management plans are guidelines and do not have the effect of law.
12. FMP's may include a description and discussion of those factors impeding development of U.S. fisheries and a discussion of how those impediments can be removed (permissive rather than mandatory).
13. Allow the Secretary of Commerce to enter into agreements with states and/or the Coast Guard to administer any permitting requirements established pursuant to the Act for boat or vessel registration. Fees collected for such permits can accrue to the involved states or the U.S. Coast Guard.
14. Allow Councils to develop confidentiality of data safeguards and procedures for data they collect.
15. Provide that FMP's or amendments to FMP's submitted to the Secretary for review and implementation, if not specifically approved or disapproved within a specified time, are automatically approved and moved to the next step, Notice of Proposed Rulemaking.
16. Allow the Secretary of Commerce to establish fees for limited entry programs higher than the administrative costs of such programs.
17. Require draft regulations to be submitted to the Secretary with all FMP's and amendments. If the Secretary changes the regulations, the changes and the reasons for them must be indicated in the Federal Register. It also puts a time limitation between the publication of Notice of Proposed Rulemaking and the publication of Final Rulemaking. This should eliminate the long delays we have encountered between the end of the comment period for Proposed Rulemaking and publication of those regulations as Final Rulemaking.
18. Allow in-season adjustments of management regulations without Secretarial approval -- a move to further regionalize management.

19. Delete the requirement for an annual report from the Councils to the Secretary and the semi-annual report on enforcement compliance required from the Coast Guard.
20. Delete the provision for imprisonment for fishery violations. Those provisions will remain for other portions of the Act, particularly assault or resistance of a Federal officer.
21. Allow the Secretary to remove a Council member for good cause and outline what that cause may be.
22. Require the Secretary to announce Council appointments 45 days before the expiration of the current term.

Other issues that the Subcommittee would like to hear testimony on and, undoubtedly will question witnesses about, are as follows:

- The problem of Federal enclaves within state territorial waters
- Can some of the Councils be consolidated?
- Foreign processing in internal waters: should there be any and who should control it?
- Include tuna in the Act (heavy pressure from the Atlantic on this subject)
- Further discussion on the issue of compensation for Council members and whether Council members, staff, AP, SSC, etc., should be reimbursed for actual expenses while traveling or be placed on the standard Federal per diem schedule and system.

In my opinion, the substantive items in this list are the speeding up of the FMP and amendment process, items 15 and 17, by putting a definite time limit on Secretarial review and action and the move toward further regionalization of management and autonomy of the Councils. If Council members are in agreement, I will draft a written statement for the oversight hearing record and work with whomever is designated to testify at that hearing in the development of verbal testimony, concentrating on those areas.

I see nothing in the proposed amendments that they are drafting that gives us any problems, although voting membership on the Pacific Council has been omitted. Most of them are things that we have agreed on between ourselves and with the other Councils at the Chairmen's meeting, or at least have tacitly agreed with them that if they want them, we certainly won't oppose them.

Some of the issues they wish to discuss but are not drafting amendment language for are a good bit more delicate. Certainly I think we should make a statement on enclaves and on processing in internal waters. Consolidating Councils and including tuna in the Act are well outside this Council's area of interest.

Discussion on Council compensation should probably be held to a flat statement that we feel that compensation is necessary and desirable if we are to keep the caliber of Council member that we have had in the past. I would prefer not to get into an argument or even discussion of travel expenses at this time. It seems almost petty when we are trying to restructure the Act to make it functional. It's much more important to improve the process than it is to worry over travel expenses.

SUMMARY: COUNCIL/BOARD OF FISHERIES JOINT PUBLIC HEARING
ON DRAFT #11, BERING SEA/ALEUTIAN ISLANDS KING CRAB
FISHERY MANAGEMENT PLAN

Kodiak, Alaska
September 10, 1981

A joint Council/Board of Fisheries public hearing was held in Kodiak in conjunction with the September 10-11 Council/Board meeting. General public in attendance included those present during the Council meeting. Synopses of individual testimony are given below.

Lt. Jack Jordan and Captain Robert Lockman, Alaska Department of Public Safety, Fish and Wildlife Protection Division, said they were concerned about potential enforcement problems resulting from implementation of an FMP. After discussing their concerns with the Council and Board, they realized that state regulations would be "federalized" so that only one set of regulations would exist for both state and federal waters. Lt. Jordan suggested that state courts handle violators more severely than do federal courts, and felt that if FCZ fisherman had the option to choose under which system they would be prosecuted, most would opt for the easier-going federal system. Lt. Jordan and Captain Lockman were also concerned over DPS jurisdiction in handling violations by catcher/processors in the FCZ.

Jude Henzler, RuralCap, Anchorage, testified in favor of the FMP and added that not only must the level of crab available for harvest be maintained, but the effort level as well. He was concerned about the low NMFS Survey abundance estimates. Mr. Henzler urged the Council and Board to initiate a study of the Norton Sound crab fishery.

Richard Goldsmith, Manager of the North Pacific Fishing Vessel Owners Association, Seattle, testified in support of the petition by NPFVOA, the Alaska Crab Institute, and the Alaska Marketing Association for a higher-than-normal exploitation rate to alleviate some of the economic hardship caused by setting quotas based on the NMFS Trawl Survey. He questioned the accuracy of the survey and suggested that an exploitation rate of almost 100% on all male crabs 6½ inches and larger would pose no threat to future king crab spawning stocks.

Mr. Goldsmith suggested that ADF&G put biologists on crab boats as observers to assess the condition of stocks, and said that the question of handling mortality might also be answered by such a program. If state funds were not available for a project such as this, he felt the industry would provide the necessary financial assistance.

Mr. Goldsmith wants Kodiak and the Peninsula included in the FMP. He was upset that the public hearing was scheduled for the time when fishermen were busy preparing to start the season. Mr. Goldsmith alleged that the Board had discriminated against non-resident crabbers by denying reconsideration of the October 15 Bering Sea opening date while at the same time, reconsidered its decision on the 7½ inch season for Kodiak.

Blake Kinnear, Kodiak fisherman, opposed the proposed FMP, stating that ADF&G had done an admirable job of managing the fishery over the years. He said in the that past he has experienced low abundance years and urged that caution be exercised when setting quotas. He felt the multi-year approach is the most risk-free management approach for the crab fishery.

Dave Herrnsteen, Kodiak fisherman, opposed the FMP and draft implementing regulations because he felt they would give the Secretary of Commerce too much power over the fishery to override Council actions. He suggested that the current low estimates of Tanner crab may be a result of federal mismanagement of that fishery.

DRAFT

JOINT STATEMENT OF PRINCIPLES

BETWEEN

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC)

ANCHORAGE, ALASKA

and

ALASKA BOARD OF FISHERIES (BOF)

JUNEAU, ALASKA

ON THE

MANAGEMENT OF DOMESTIC KING CRAB FISHERIES

IN THE BERING SEA AND ALEUTIANS

Recognizing that NPFMC has a legal responsibility for reviewing and recommending to the Secretary of Commerce measures for the conservation and management of the fisheries of the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska, with particular emphasis on the consistency of those measures with the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act); and

Recognizing that State and Federal governmental agencies are limited in fiscal resources, and that the optimal use of these monies for North Pacific fisheries management, research, and enforcement occurs through a clear definition of agency roles and division of responsibilities, thus avoiding unnecessary duplication; and

Recognizing that the State of Alaska has for more than two decades exercised effective control over domestic king crab fisheries both within and without its territorial waters. The State system centers around BOF for policy and regulations. BOF's regulatory system provides for extensive public input; is sufficiently structured to insure annual revisions; is flexible enough to accommodate resource and resource utilization "emergencies;" and is understood and familiar to the users of North Pacific fisheries resources. Further, there exists a substantial investment by the State in facilities, communications and information systems, vessels and other equipment, coupled with a cadre of experienced personnel capable of carrying out extensive management, research, and enforcement programs to monitor the conduct of the fisheries and the status of the resources.

Therefore, NPFMC and BOF enter into this Joint Statement of Principles, defining the roles of both organizations, in order to achieve the most effective and efficient management of domestic king crab fisheries in the Bering Sea and Aleutians.

I. Applicable Fisheries

This Joint Statement of Principles applies only to the domestic fishery for king crab (all members of genera Paralithodes and Lithodes) in the Bering Sea, Bristol Bay, Adak, and Dutch Harbor areas, also known as State of Alaska king crab statistical areas Q, T, R, and O. This fishery is hereinafter referred to as "the fishery."

II. Duration of Agreement

Recognizing that NPFMC is currently preparing a Fishery Management Plan (FMP) for the fishery, this agreement shall remain in effect until that FMP is implemented by the Secretary of Commerce. At that time the agreement shall be reviewed by both NPFMC and the BOF and revised as necessary and as they may agree so that it will conform with the then existing situation.

III. NPFMC and BOF shall undertake the following activities:

1. NPFMC and BOF shall adopt the framework developed and approved by both organizations in April and May, 1981 to govern management of the fishery, prescribing objectives, standards, and measures found to be necessary for the fishery's effective management. These objectives, standards, and measures are consistent with the national standards of the Magnuson Act and with the laws of the State of Alaska; and do not discriminate between residents and non-residents of the State of Alaska.
2. The framework shall be implemented through regulations adopted by BOF in accordance with the laws of the State of Alaska, which shall be consistent with the objectives, standards, and measures prescribed in the framework. Before taking final action on any regulation governing the fishery, BOF shall make readily available in

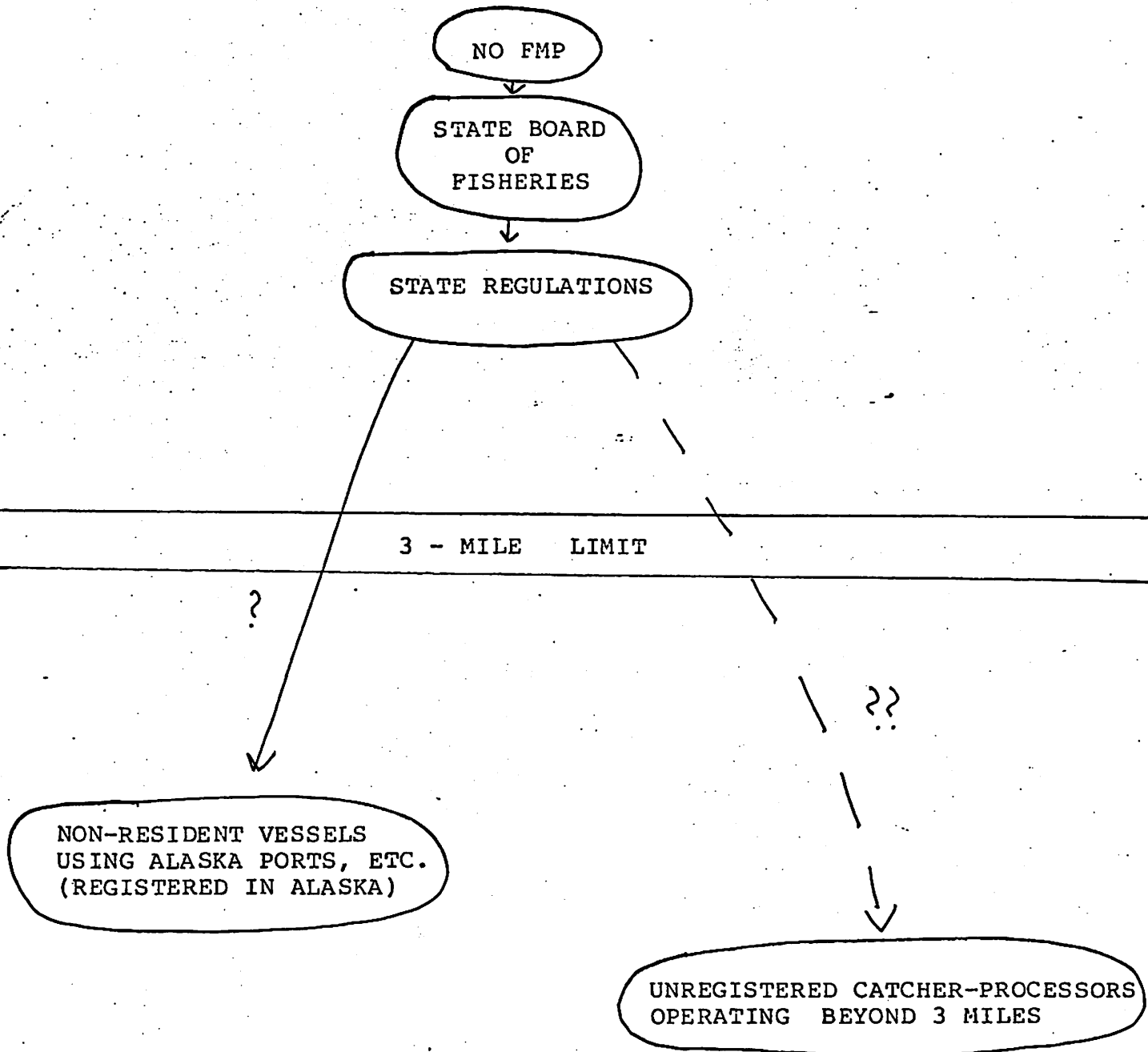
written form to all persons interested in the fishery for a period of at least thirty (30) days, the reports and data received by BOF upon which the proposed regulation is based; shall afford all such persons the opportunity to submit written and oral comments to BOF on the proposed regulation during that period; and shall, upon the request of NPFMC, meet with NPFMC or its representatives to discuss the proposed regulation. Before any BOF regulation governing the fishery goes into effect, BOF shall issue a written statement explaining the basis for the regulation. The preceding provisions of this paragraph shall not apply to emergency regulations.

3. NPFMC and BOF shall meet jointly at least once every calendar year to consider management of the fishery and discuss the need for amendment of the framework or any regulations governing the fishery. NPFMC and BOF or their designated representatives shall also meet jointly to consider management of the fishery at the request of either NPFMC or BOF. All persons and agencies interested in the fishery shall have the opportunity to submit written and oral comments and reports on management of the fishery to NPFMC and BOF at these meetings. In preparation for the mandatory annual joint meeting provided for in the first sentence of this paragraph, representatives of NPFMC and BOF shall hold a public hearing in the State of Washington at which all persons and agencies interested in the fishery shall be afforded the same opportunity to comment on management of the fishery that they would have at the meeting itself.

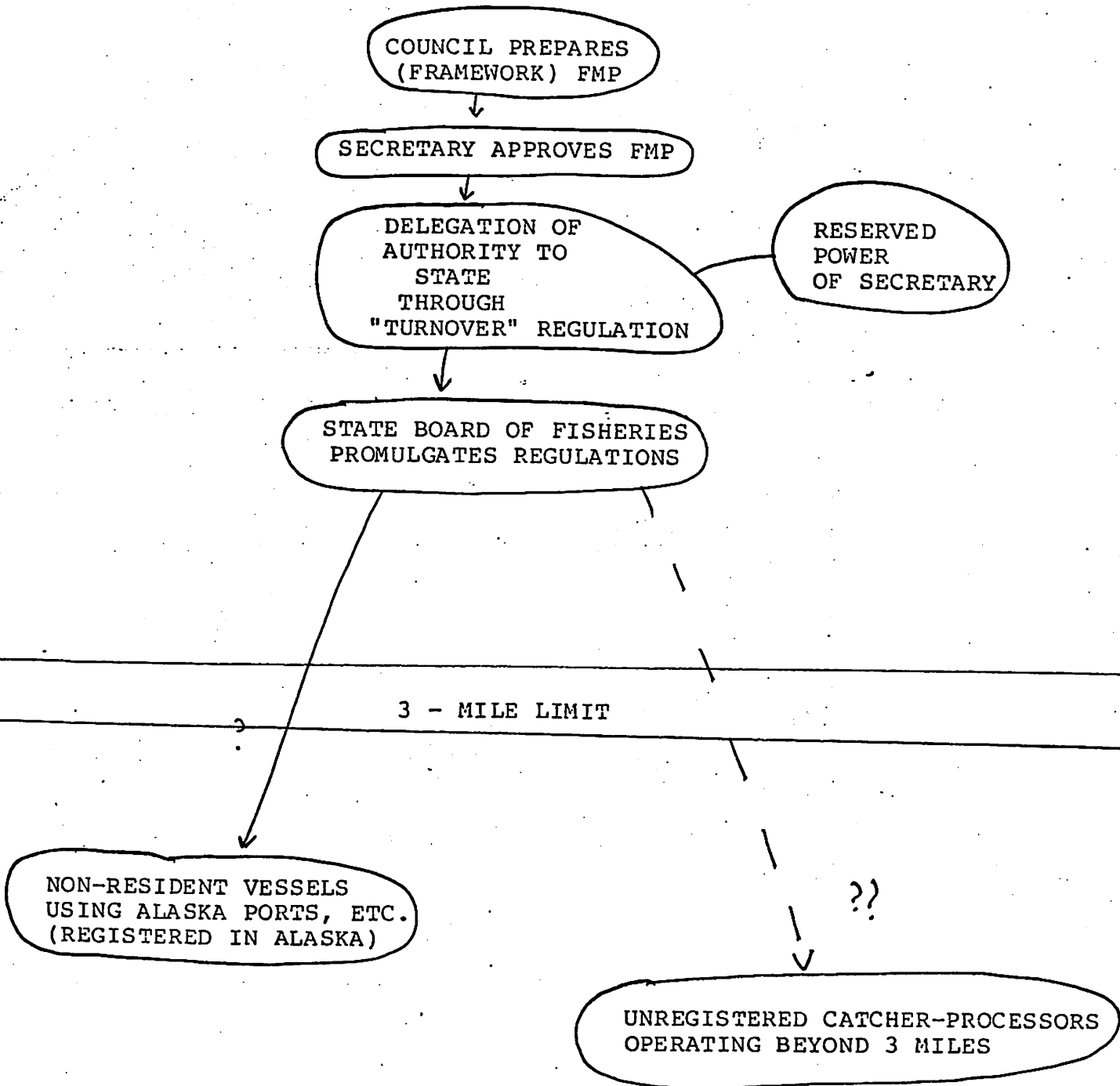
4. The Alaska Department of Fish and Game (ADF&G) shall have primary responsibility for developing the information upon which regulations governing the fishery are to be based, and for implementing these regulations through monitoring of the fishery and development of in-season management measures. NPFMC and BOF shall encourage ADF&G, in carrying out this responsibility, to consult actively with the National Marine Fisheries Service and the fishery management agencies of other states, in order to prevent duplication of research and management effort and to make optimum use of the resources available for management of the fishery.

5. NPFMC and BOF shall resolve conflicts on the framework and implementing regulations through all appropriate means.

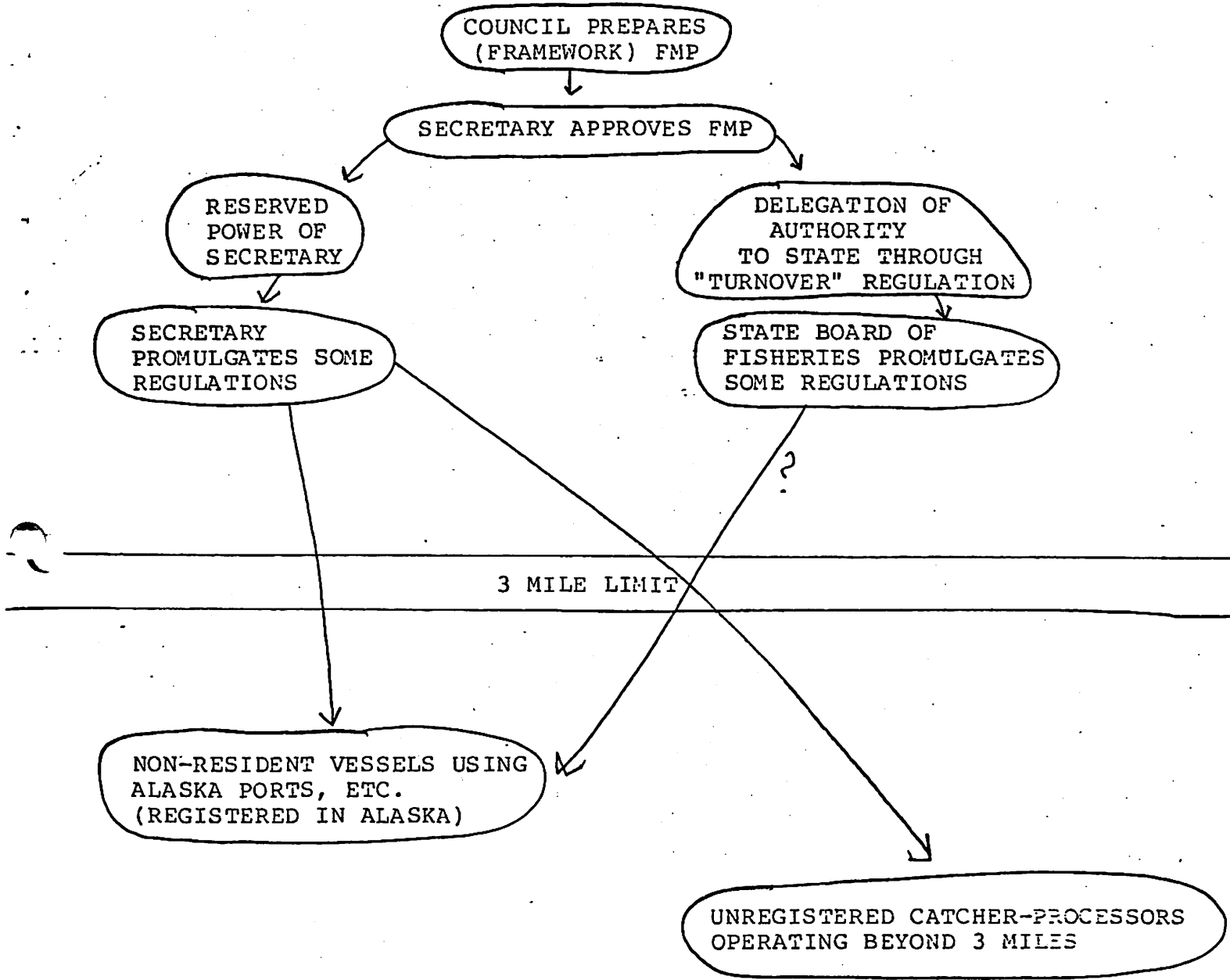
I. STATE REGULATION



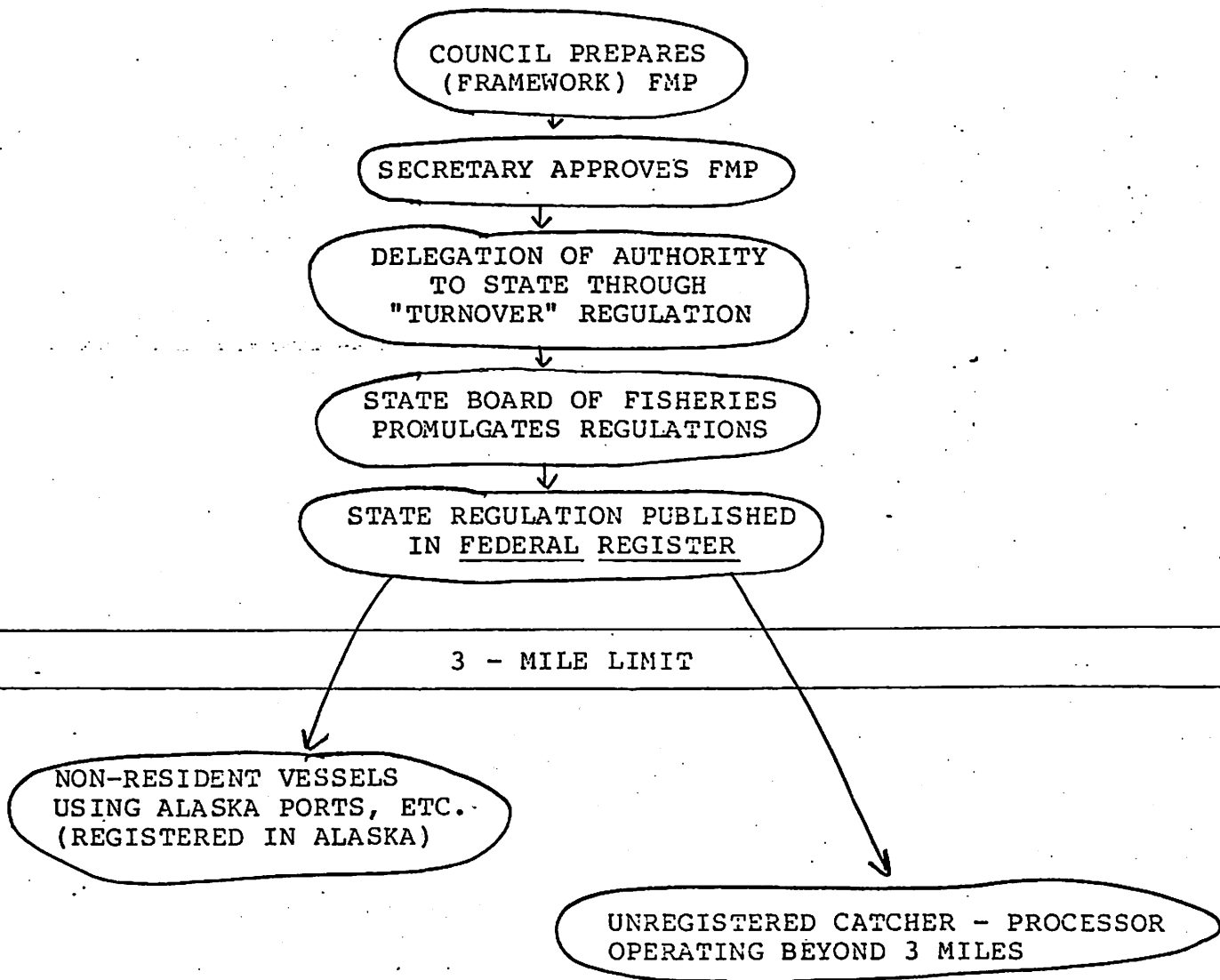
II. STATE REGULATION UNDER
FMP WITH DELEGATION



II.a STATE REGULATIONS AND FEDERAL REGULATIONS UNDER FMP



II. b "FEDERALIZED" STATE REGULATION
PURSUANT TO FMP



KING CRAB:

I. Pure State Regulation - Council Finds State Management Adequate

This is the only option where no FMP is approved by the Secretary of Commerce.

The Council makes a finding that State management is adequate, and/or that the benefits of federal regulation in this case are insufficient to justify the full costs of an FMP. This finding may be based on National Standard 7, ("minimize costs and avoid unnecessary duplication"), as well as on E.O. 12291.

Under this option the Council and Board may decide to operate under a protocol such as the Joint Statement of Principles, or a similar arrangement intended to allow some limited interaction between the two¹ regulatory bodies.

PROS

1. Simplest, cheapest and most straightforward.
2. Does not require secretarial approval; no delays.

CONS

1. Political opposition strongest.
2. Does nothing to dispose of jurisdictional issues, which will have to be decided in court.

Comments

This is the status quo alternative; a logical choice under current theories of regulatory reform, suggesting that if the State is already doing a good job, the less federal intervention the better.

Doubts concerning the jurisdiction of the State over the registered (non-resident) and unregistered (catcher - processor) fleet would be unaffected; these issues probably would have to be litigated.

Success depends on the Secretary's abstention from ordering an FMP to be prepared under Magnuson Act §304(c). He need not agree with the Council's decision. He may conclude the decision of the Council, once made, should be respected unless clearly erroneous. E.O. 12291, requiring the least costly alternative, and National Standard 7, militating against duplication of functions, provide good support for this no-FMP option.

Litigation is quite likely here, since non-resident vessels will probably continue to resist State jurisdictional assertions. They may even sue for some form of affirmative "relief." However, based on NPFVOA's representations so far, there are few grounds, if any, to justify the conclusion that litigation will be much less likely no matter which option is adopted. Therefore, avoidance of litigation is probably not in itself a sufficient reason to choose any of these alternatives.

II. State Regulations Pursuant to FMP

This is the option the Board and Council have decided on for 1982; II(a) and II(b) are both variations on this alternative which were not discussed at the last meeting.

A framework FMP is prepared by the Council and approved by the Secretary. Through a single federal regulation under this FMP the Secretary delegates or "turns over" to Alaska the job of carrying out (implementing) the FMP through existing and future state regulations, to be promulgated by the Alaska Board of Fisheries, under Alaska law.

The Board will carry out its regulatory business in the usual way, except that it will hold at least one meeting in Seattle annually, mail copies of proposals, final regulations, and supporting materials, to the NPFVOA

membership and to operators of all registered vessels, and publish written explanations for the regulations it adopts each year in order to conform its regulatory procedures with federal Administrative Procedure Act.*

PROS

1. Allows full Council participation in planning for the management of the fishery.
2. Cuts down on federal regulations and associated delays since the only Washington, D.C., approvals needed would come at the "front end", when the FM P and "turnover" regulation were adopted.
3. Allows the Secretary to hold federal powers in reserve in case the State fails to act according to requirements of the Magnuson Act and other applicable law. In this event, he can take corrective action by promulgating independent federal regulations under §305(c) or (e).

* All of these measures, aimed at showing Alaska's good faith efforts to include the non-resident fleet in its regulatory process, should be employed no matter which proposal is finally selected.

CONS

1. Probably does not extend State's jurisdiction over unregistered vessels operating outside three miles, thereby leaving a gap (or potential gap) in the regulatory net. (This gap may have an effect on the likelihood of the Secretary's approving the plan, although this is only speculation).

Comments

Under this option, as well as under IIa and IIb, the Secretary reserves authority to override any State regulations he may judge to be contrary to the framework FMP or the Act. He may do this through his Regional Director, or through Washington.

It is unclear, as a legal matter, what effect the delegation itself (the "turnover" regulation) may have upon the extraterritorial reach of Alaska's jurisdiction. Will a court agree that State regulations issued pursuant to a federal delegation of authority have a longer reach vis a vis non-resident vessels outside 3 miles; or will the court say that they are still only state regulations, and that delegation per se does not serve to extend a state's jurisdiction over non-residents.

IIa. State and Federal Regulations under FMP

This differs from II, above, only in that here the Secretary makes use of his reserved powers (after the delegation) to issue separate federal regulations intended specifically to reach those segments of the fleet over which Alaska's regulations may be ineffective. For example, he could direct federal regulations at catcher-processors which have no Alaskan contacts and are not registerable under State laws.

PROS

1. All the advantages of II, above, with the added benefit of full coverage.

CONS

(See Comments).

Comments:

What will be the full and final extent of federal involvement under this option? Will it grow over time? Will individuals and organizations continue to petition Washington for coverage by federal regulations? If so, any

advantages achieved in terms of saving time and money may be nullified in the long run.

I Ib. "Federalized" State Regulations under (Framework) FMP

Procedurally, this differs from II only in one feature: the regulations issued by the Alaska Board of Fisheries would be reproduced in the Federal Register. In effect, this turns State regulations into federally enforceable measures reaching all vessels in the FCZ, including those which never enter Alaskan waters and are not registered under State law. There would be no need for any separate federal regulations.

PROS

(1) One uniform regulatory scheme covering the entire fishery, promulgated by the Alaska Board of Fisheries.

(2) NPFOA's demand for access to federal courts in enforcement cases could be satisfied.

CONS

(1) Will DOC and OMB be satisfied to review the framework

FMP, the delegation regulation, and the single, initial package of state regulations? Or will these agencies insist on individual, one-at-a-time, E.O. 12291 reviews of subsequent state regulations, thereby depriving the entire plan of its advantages? Since this proposal appears to satisfy most of the NPFVOA's complaints, and also conforms with the spirit of the Administration's program of regulatory reforms, we are hopeful that DOC and OMB will recognize these facts and refrain from any form of review tending to nullify the benefits of the arrangement.

NOTE ON ENFORCEMENT

The cooperative State-Federal enforcement agreement now in use need not be affected, regardless of which option is selected. Because the State has the necessary machinery already in operation, enforcement would continue to center around shore-based or dockside inspections, augmented by occasional inspections of pots in the water.

Under I, the no-FMP option, all enforcement actions would be filed in the district and superior courts for the State of Alaska. Under II, State regulations pursuant to an FMP, the result would be the same, since the regulations probably would be deemed State measures notwithstanding the delegation. Under IIa or IIb, however, certain cases would

be handled administratively according to FCMA procedures, by the NOAA General Counsel's Office in the Alaska Region. Others will be filed in the U.S. district court for Alaska by federal attorneys.

How enforcement jurisdiction will be shared between the state and federal prosecutors can be the subject of a separate policy agreement. Most likely, the state would continue to enforce against its residents, and against non-residents inside 3 miles who violate landing laws. In all probability, cases against unregistered vessels would be brought in federal court. Whatever policy is settled upon, however, it probably should be reduced to writing and published as a Federal Register notice, lest there be allegations of arbitrary conduct, selective enforcement, and the like.

North Pacific Fishery Management Council

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

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MINUTES

44th Plenary Session NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Sheraton Hotel
Anchorage, Alaska
September 24-25, 1981

The North Pacific Fishery Management Council convened at 9:30 a.m. on Thursday, September 24, 1981, in the Kuskokwim Room of the Sheraton Hotel in Anchorage, Alaska. The meeting continued until 3:55 p.m. on Friday, September 25.

The Scientific and Statistical Committee met in Anchorage on September 22-23, 1981 at the Council headquarters' Conference Room.

The Advisory Panel met from 9 a.m. to 6:15 p.m. in Room 311 of the Sheraton Hotel in Anchorage.

Council members, Scientific and Statistical Committee members, Advisory Panel members, and general public in attendance are listed below:

Council

Clement V. Tillion, Chairman
Harold E. Lokken, Vice-Chairman
Don Collinsworth, for Ron Skoog
Robert Mace, for John Donaldson
Charles Woelke, for Rolland Schmitten
James Brooks, for Robert McVey
Leroy Sowl, for Keith Schreiner

James O. Campbell
John P. Harville
Joe Demmert, Jr.
RADM Richard Knapp
Keith Specking
Chris Dawson, for Ray Arnaudo

Scientific and Statistical Committee

Donald Rosenberg, Chairman
Richard Marasco, Vice-Chairman
Al Millikan
Steve Langdon
Jim Balsiger, for William Aron

Ed Miles
John Clark
Larry Hreha
Jack Lechner

Advisory Panel

Robert Alverson, Chairman
A. W. "Bud" Boddy, Vice-Chairman
Jesse Foster
Eric Jordan
Rick Lauber
Dan O'Hara
Alan Otness
Lewis Schnaper
Tony Vaska

Al Burch
Larry Cotter
Richard Goldsmith
Joe Kurtz
Raymond P. Lewis
Ken Olsen
Don Rawlinson
Jeff Stephan

NPFMC Staff

Jim H. Branson, Executive Director
Clarence Pautzke, Deputy Director
Jim Glock
Jim Richardson
Peggy Hough

Peggy McCalment
Judy Willoughby
Steve Davis
Jeff Povolny
Rebecca Wetzler

Support Staff

Ron Naab, NMFS
Mark Miller, ADF&G
Steve Hoag, IPHC
Jack W. Jordan, DPS
Mary Thompson, NMFS
Douglas McCaleb, NOAA/NMFS
Jerry Reeves, NMFS
LCDR Doug Smith, USCG
Bob Otto, NMFS

Phil Chitwood, NMFS
Patrick Travers, NOAA
Kirk Beiningen, ODF&W
Daphne White, NMFS
Maggie Frailey, NOAA/GC
Ron Berg, NMFS
Robert Simon, CFEC
Fred Gaffney, ADF&G
Loh-lee Low, NWAFC

General Public

Jay D. Hastings, Japan Fisheries Association, Seattle
Brent Whitmore, Seward Chamber of Commerce, Seward
Kumi Laturia, Japan Deep Sea Trawlers Association, Tokyo
Sean Kelly, Jeff Hendricks & Associates, Anacortes, Washington
Ryozo Kaminokado, Office of the Japanese Consulate, Anchorage
Thomas H. Boyd, BLM Alaska OCS Office, Anchorage
Royal J. DeVaney, Pacific Pearl Seafoods, Seldovia
John Schmiedtke, Nordstern, A.G., Seattle
Anthony M. Aparo, International Seafoods, Kodiak
Hiromi Kawamoto, Taiyo Fishery Company, Tokyo
Dennis Petersen, Ocean Spray Fishery, Seattle
Dave Harnelle, Fisherman, Kodiak
Henry Mitchell, Bering Sea Fishermen's Association, Anchorage
Perfenia Pletnikoff, Jr., Tanadgusix Corporation, St. Paul Island
Paul MacGregor, Japanese North Pacific Longline and Gillnet Association, Seattle
Stephen B. Johnson, Japan Deep Sea Trawlers and Hokuten Trawlers Association, Seattle
Lynne Z. Hale, Alaska Native Foundation, Anchorage
Forbes G. Baker, Alaska Longline Fishermen's Association, Sitka

Ralph S. Jones, Alaska Shell, Inc., Seattle
Michael D. Kelly, AEIDC - University of Alaska, Anchorage
Richard W. Lundahl, Pelican Advisory Committee, Pelican
A. Krukoff, Aleut Corporation, Anchorage
Sig Jaeger, North Pacific Fisheries Development, Inc., Seattle
Don Beeson, Seward Fisheries, Anchorage
Keith A. Getz, Anchorage
Mel Monsen, Bering Sea Fishermen's Association, Anchorage
Roy Jackson, Natural Resources Consultants, Seattle
Maurice Ingram, Alaska Trollers Association, Ketchikan
Kathleen Graves, Anchorage
Eric Sutcliffe, Unalaska
E. O. Oswald, Sealaska, Juneau
J. J. Dirke, Anchorage
N. Tokaji, Japanese North Pacific Longline and Gillnet Association,
Tokyo
T. Nemoto, Japanese North Pacific Longline and Gillnet Association,
Tokyo
Kelly Roth, Office of the Japanese Consulate, Anchorage
Ann Cony, Anchorage Daily News

A. CALL TO ORDER AND APPROVAL OF AGENDA AND MINUTES OF THE
PREVIOUS MEETING

The meeting was called to order by Chairman Clem Tillion, who welcomed newly-appointed Council member Keith Specking, Robert Simon of the Commercial Fisheries Entry Commission, Juneau, and Margaret Frailey, Daphne White, and Mary Thompson from NOAA/NMFS in Washington, D.C.

Approval of Agenda

Chairman Tillion called for approval of the agenda. *Harold Lokken moved that the agenda be adopted as written; seconded by Robert Mace with the stipulation that election of officers be the first item handled. There being no objection, it was so ordered.*

Election of Officers

Robert Mace nominated Clem Tillion for the office of Council Chairman and Harold Lokken for Vice-Chairman, noting the need for continuity in the ongoing work of the Council. The nominations were seconded by Charles Woelke. Clem Tillion and Harold Lokken were unanimously elected Chairman and Vice-Chairman for one-year terms.

Approval of Minutes

Because only two weeks had elapsed since the joint Council/Board meeting in Kodiak, minutes of the September 10-11 meeting were not available.

B. SPECIAL REPORTS

B-1 Executive Director's Report

The Executive Director reported on Council and Council-associated events in which the staff will participate in conjunction with FISH EXPO in Seattle. These activities include the Alaska Groundfish Trawler Conference, Council public hearings in Seattle and Sitka, the 50th Anniversary Celebration of the Northwest and Alaska Fisheries Center, the Fishery Energy Conservation Conference sponsored by the Society of Naval Architects and Marine Engineers, and FISH EXPO itself.

Council member Bevan was in Washington, D.C. at the time of the meeting to testify before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment on proposed amendments to the Magnuson Act.

Mr. Branson reported that a delegation from the Korean Marine Industrial Development Corporation and the Republic of Korea visited the Council office on their way to Kodiak to investigate their latest violation apprehended by the Coast Guard. They were very concerned about their reputation for adherence to U.S. regulations.

B-2 Alaska Department of Fish and Game Report on Domestic Fisheries

Mark Miller reported that through the end of July the Alaskan domestic groundfish catch was over 180 million pounds -- almost twice the 1980 total catch of 98 million pounds. As many as 11 foreign processors and 15 domestic catcher vessels participated in joint venture fisheries off Alaska during August.

The Southeast Alaska troll salmon season closed on August 10 in the FCZ. Preliminary harvest estimates indicate that optimum yield (243,100 - 272,000 chinooks) was reached. Final figures are not yet available, but they are expected to be at or above the upper end of the range.

Bristol Bay produced 27.7 million salmon in 1981, second only to the 28.1 million landed in 1980. Record landings of chinook, chum, sockeye, and coho were also recorded.

The king crab fishery opened on September 15 from the Kodiak area westward. The opilio Tanner crab season closed on September 1 with a total catch of approximately 53 million pounds.

Chairman Tillion asked Mr. Miller for a report on chinook escapements for all British Columbia rivers before the next Council meeting.

B-3 National Marine Fisheries Service Report on Foreign Fisheries

Phil Chitwood reported that slightly over 59% or 837,000 mt of the 1.4 million mt Bering Sea TALFF had been taken as of August 29. Poland had taken 63% of its 71,000 mt allocation; Korea, 76% of its 160,000 mt allocation; and Japan, 58% of its 1.1 million mt allocation. Pollock comprised 81% of the catch, flatfish 11.5%, Pacific cod 2.3%, Atka mackerel 1.3%, and all other species 4.2.%.

Thirty-five percent or 110,000 mt of the 309,000 mt Gulf of Alaska TALFF had been taken as of August 29. Pollock comprised the greatest portion of the catch (56%), followed by Pacific cod at 18%.

Ron Naab reported a steady decline in the number of foreign vessels fishing off Alaska. At the end of July, 493 vessels (90% Japanese) were operating in the Alaska FCZ. At the end of August only 325 foreign vessels remained, and by September 18 the number had fallen to 249. Japanese concentration was heaviest in the central Bering Sea where six factory ships and 90 catcher boats participated in surimi production from pollock and 54 stern trawlers targeted on Pacific cod. South Korea fished a total of 21 vessels, with 14 in the Gulf of Alaska targeting on pollock and Atka mackerel; four stern trawlers and a support ship in the Bering Sea fishing for pollock and flounders; and a factory ship and one stern trawler participating in the joint venture pollock fishery in the Bering Sea.

B-4 U.S. Coast Guard Report on Enforcement and Surveillance

LCDR Doug Smith reported that since the July Council meeting the Coast Guard issued nine reports of violation and six citations to seven Japanese, six Korean, and one Taiwanese vessel fishing in the FCZ off Alaska.

The Japanese stern trawler FUKUI MARU NO. 8 was seized near Attu for 37% underlogging of its turbot catch. That case is pending. Two Korean vessels, NO. 7 SANG WON and JINAM NO. 305, were seized for apparent underlogging; however, upon inventory of the holds, the catch logs were found to be reasonably correct and the vessels were immediately released.

B-5 Update on Joint Venture Operations

John Schmeidtke of Nordstern, A.G., reported that the West German operation using the FRIEDRICH BUSSE ended on September 1 with a total of approximately 3,000 mt of fish bought, which is 25% of the allocation. The operation was quite good for the U.S. fishermen, but not economically viable for the BUSSE on pollock alone. Nevertheless, Nordstern is trying to work out the details for a 1982 joint venture and wants to carry trainees and observers on board.

Mr. Schmeidtke asked the Council for an extension of time to November 1 for trans-shipping in the Makushin Bay area. The area is now scheduled to close on October 15. Last year the FRIEDRICH BUSSE suffered damages, personal injuries to its crew, and significant time losses due to inclement weather while attempting to offload at sea after the designated trans-shipping area had been closed. He also asked the Council to consider opening a free port in Alaska for foreign vessels to offload their catches, citing not only the increased convenience for foreign vessels but economic advantages for the state.

The Council instructed the Executive Director to write a letter to the Regional Director, NMFS, stating that the Council has no objection to extending the use of the Makushin Bay loading zone beyond its current closing date. The Council agreed that the next series of amendments to the Bering Sea/Aleutian Island Groundfish FMP should include re-examination of loading zones, closed areas, and other static regulations in light of the current situation.

Pribilof-Highly SeaProducts, Inc. has encountered mechanical and other problems in its operation with the Taiwanese vessel GOLDEN DRAGON NO. 1. Highly Enterprises reports a total catch of 2,174 mt for the GOLDEN DRAGON and 574 mt for the HIGHLY 302, replacement vessel for the GOLDEN DRAGON during its down time. All but one of the Aleut trainees working aboard the GOLDEN DRAGON have dropped out of the program and returned to St. George Island. The remaining trainee is now enrolled in the commercial fisheries program at Clatsop Community College in Oregon.

Mick Stevens reported that five processors and eight U.S. catcher vessels harvested over 28,000 mt of yellowfin sole and cod from early May to September 12 in the Marine Resources Company joint venture. The operation plans to continue into early October.

Nippon Suisan and Universal Seafoods used the AMERICAN NO. 1 and the MUIR MILACH to supply 6,225 mt of pollock and cod and 775 mt of incidental species to the Japanese mothership KONGO MARU from June 1 to July 7 in the Bering Sea. Nippon Suisan is currently evaluating another, possibly longer joint venture operation with the two U.S. vessels.

The Taiyo/Pan-Alaska venture ended on June 1 with a catch of 5,253 mt pollock, 43 mt cod, and 20 mt other species.

Two U.S. trawlers delivered about 2,200 mt of pollock and 20 mt of cod to a Polish processor between June and mid-September from the Unimak Pass area. Although temporarily halted now, the operation is expected to resume on October 1.

With improved coordination between KMIDC and its American partners, approximately 27,000 mt of pollock has been harvested in that venture since March. The operation is expected to continue through October.

Sig Jaeger, Perfenia Pletnikoff, and Agafon Krukoff presented an informational report on the Tanadgusix Corporation operation off St. Paul Island. With the assistance of TDX Corporation the Aleut Native Corporation built two 24-foot baby longliners for their developing halibut fishery. They hope to begin taking true cod and squid also. Their total catch this year was 18,000 pounds, the first commercial halibut landings in the Pribiloffs. The product, which is shipped immediately to Anchorage by air, has been well received. Future plans include fisheries training for Island residents, but this year's principal focus will be vessel repair and maintenance.

B-6 SSC and AP Reports on Non-Agenda Items

The SSC reviewed its current charter, which will expire on April 13, 1982, for consistency with current activities and policies. No changes were recommended.

C. OLD BUSINESS

C-1 Report on Halibut Limited Entry Meeting

Jim Richardson, staff economist, reported on the initial meeting of the special halibut limited entry workgroup appointed by Chairman Tillion at the July Council meeting. The workgroup considered three choices for limited entry in preparation for identifying objectives for a limited entry program: (1) the status quo; (2) a limited entry program for the halibut fishery; and (3) a limited entry program for a hook and line fleet fishing for halibut and other species. The workgroup agreed that because of the biological interrelationships of possible target species for the longline fleet, it would be more appropriate to consider a limited hook and line fleet rather than to concentrate only on the halibut fishery. Management objectives identified by the workgroup were:

1. Distribute the hook and line fishery, both in time and space, to ensure conservation of the resource.
2. Avoid further overcapitalization, thus encouraging development of an economically viable and efficient year-round multi-species domestic hook and line fishery that:
 - a. is made up of owner/operator rights holders; and
 - b. makes it possible for fishermen to earn a major share of their income from hook and line fishing.
3. Make certain that the costs of administration and enforcement, while effective, are not excessive relative to the benefits of the program.

4. The program would not preclude the extraction of rents or royalties from the fishery at some point in the future.
5. Minimize adverse biological impacts of the program on related fisheries.
6. Insure that no particular entity acquires excessive control of rights to participate in a fishery.
7. Attempt to be compatible with IPHC objectives.
8. Minimize disruption of the present fleet by using past performance to distribute initial rights.
9. Use the market to transfer fishing rights after initial distribution.

The SSC subgroup for halibut and the Council staff are prepared to develop a specific RFP upon request of the Council.

The Council discussed various methods of recordkeeping and enforcement for the proposed limited entry system. Chairman Tillion suggested another alternative for consideration, that only those fishermen who deliver other kinds of fish than halibut (i.e., Pacific cod, sablefish, rockfish) be allowed to fish halibut the next season. He felt this would help to quickly develop the U.S. longline fleet and end foreign involvement in the gray cod and sablefish fisheries.

Robert Simon, Executive Director of the Alaska Commercial Fisheries Entry Commission, was asked to comment on the feasibility of the program under consideration by the Council. Mr. Simon suggested that before the Council issues a Request for Proposals on a halibut limited entry system, it should seek legal advice as to the constitutionality of assigning property rights on a resource. He also suggested that a demographic study be conducted to determine shareholder eligibility.

Patrick Travers reminded the Council that the state's current limited entry law has been declared illegal by the Superior Court and action is now pending in the Supreme Court.

Public Testimony

Hank Ostrosky, Naknek fisherman, said that the high salmon losses sustained in western Alaska this year were triggered by the state's limited entry system. He urged the Council to study limited entry from a maritime model before going any further in establishing a limited entry system.

Forbes G. Baker, president of Alaska Longline Fishermen's Association, Sitka, said that ALFA has favored the concept of limited entry for the halibut fishery since 1978. Their members

have considered limited entry both for the halibut fishery and for the hook and line fishery and do favor establishing some type of limited access system.

Council Action

The Advisory Panel heard and discussed the report of the Limited Entry Workgroup, but no consensus was reached as to how the Council should proceed. The AP felt that the procedure for developing options for limited entry was unclear.

Bob Mace moved that the Council approve the objectives contained in the report of the Limited Entry Workgroup and instruct the staff to develop an RFP for Council review at the December meeting. The RFP should include information on the legal restraints of such a system, the three basic options for limited entry --status quo, halibut limited entry, or hook and line fishery limited entry, and any other such options as may be appropriate. The motion was seconded by Don Collinsworth. There being no objection, it was so ordered.

C-2 Review of Advisory Panel Subgroup Memberships

The Advisory Panel reviewed the composition of FMP subgroup memberships. Dick Goldsmith was added to the Gulf of Alaska Groundfish subgroup and Larry Cotter to the Inter-Council Salmon Coordinating subgroup. AP members were instructed to contact the Council staff if further changes are desired.

Council confirmation of Advisory Panel subgroup memberships was postponed until the December Council meeting.

D. NEW BUSINESS

D-1 Election of Council Chairman and Vice-Chairman

Report of the election is included under item A of these Minutes.

D-2 Approve 1982 Meeting Schedule

The Executive Director proposed the following meeting schedule for 1982:

January 4-7	Juneau
March 24-26	Anchorage
May 27-28	Anchorage
July 29-30	Anchorage
September 23-24	Sitka or Anchorage
December 6-10	Anchorage

Seven full Council, SSC, and AP meetings and one additional Council-only meeting were budgeted for FY 82. With a six-meeting schedule, sufficient funds would be available in the budget for an emergency meeting, if necessary, and/or various Council workshops.

The Advisory Panel concurred with the proposed meeting schedule and urged the Council to hold a meeting in Sitka in either March or September.

Council Action

Don Collinsworth moved adoption of the six-meeting schedule outlined by the Executive Director with the understanding that additional meetings will be called if necessary; seconded by Bob Mace. There being no objection, it was so ordered.

D-3 Update Council Subgroups

Action on this item was deferred until the December Council meeting.

D-4 Interim Appointments to the Advisory Panel

Council policy allows the Chairman to make appointments for interim vacancies on the Advisory Panel from existing nominations on file. *Forbes G. Baker and Kristy Long were appointed to fill the remaining terms vacated by Keith Specking, who was appointed to the Council, and the resignation of Paula Easley.*

D-5 Review of Foreign Permit Applications

The Permit Review Committee considered permit applications from six Japanese vessels which committed serious violations during 1981. Council policy states that any violation resulting in a fine of \$3,000 or more constitutes a "serious" violation.

In December 1980 the Permit Review Committee recommended denial of a 1981 permit to the RYUHO MARU NO. 38, whose case on an October 1980 seizure for mislogging was at that time unsettled. The case remains unsettled, and because the vessel was also seized in December 1979 for mislogging, the Permit Review Committee recommended that no permit be granted until the October 1980 case is settled.

The Permit Review Committee recommended that no recommendation for either approval or disapproval be made for the four vessels whose cases were still unresolved at the time of the meeting (DAIRIN MARU NO. 28, YAMASAN MARU NO. 85, YURYO MARU NO. 8, and FUKUI MARU NO. 8).

The Permit Review Committee recommended approval of a permit for the DAIKICHI MARU NO. 38, whose case was settled for \$550,000 and a six-month permit suspension.

The Advisory Panel recommended that the Council deny permits to all six Japanese vessels due to the severity of their past offenses.

Council Action

Don Collinsworth moved acceptance of the recommendations of the Permit Review Committee; seconded by Charles Woelke. There being no objection, it was so ordered.

E. FISHERY MANAGEMENT PLANS

E-1 Salmon FMP

Plan Coordinator Jim Glock said that the technical review group for Confederated Tribes v. Baldrige will meet in Seattle on October 1 and 2. The Salmon PMT reviewed what little data were available at the time and had no regulatory proposals for the 1982 season. Because of the pending lawsuit and the lack of PMT proposals, the PMT suggested that the period for proposals be extended through the January Council/Board meeting in Juneau.

The Council and AP reviewed a summary of discussions at the Kodiak meeting on the Confederated Tribes case.

After hearing the report on the lawsuit, the Advisory Panel adopted the following motion by a vote of 9 to 5.

"The AP urges the Council to seek a final legal determination that the salmon fishery in the waters off Alaska is subject to treaty obligations before amending the Southeast Alaska Troll Fishery Management Plan to meet treaty obligations."

The SSC discussed some of the implications that Judge Craig's ruling may have on future management measures for the Troll Salmon FMP and the importance of the workshop on the Washington Department of Fisheries salmon model. *The Council authorized the SSC to send Bud Burgner, Al Millikan, Don Rosenberg, and Steve Langdon to the workshop at Council expense.*

Public Testimony

Dennis Karnopp, representing the Confederated Tribes and the Columbia River Inter-Tribal Fish Commission, said that the Confederated Tribes' lawsuit is an outgrowth of a case which has spanned more than a decade. The treaty rights of the 1850's with the United States government are political rights. He said that because tribal councils are, in fact, governments, the Indians cannot be considered just another user group.

Mr. Karnopp asked the Council to appoint a CRITFC scientist to the Salmon PDT. *The Chairman asked Mr. Karnopp to furnish to the Council resumes of CRITFC scientists they would like to have considered for membership on the Salmon PDT.*

E-2 Herring FMP

Review of Herring Fishery Management Plan

Plan Coordinator Jim Glock reported that the Plan Maintenance Team has discovered significant problems in applying this year's data to the procedures outlined in the FMP. Specific problem areas were the determination of OY, allocation of harvestable surplus, the allowable incidental catch (AIC) formula, inclusion of the Nelson Island subsistence stocks in determination of OY, and the need for greater flexibility to allow for inadequate data. The PMT recommended withdrawing the plan from Secretarial Review to make technical modifications which will allow the FMP to work more effectively.

The SSC agreed that application of the AIC formula does present a problem, but were not convinced that the problem is with the formula itself. The SSC recommended that Vidar Weststad be appointed scientific advisor to the team and that the team work with him to resolve the problems encountered.

The SSC recommended against withdrawing the plan from Secretarial review, and suggested that an amendment package addressing the concerns of the PMT be developed immediately and submitted for Secretarial review.

The Advisory Panel stated emphatically that everything possible should be done to remedy the problems with the Herring FMP before deciding to withdraw the plan from Secretarial review.

Public Testimony

Steve Johnson, representing Japan Deep Sea Trawlers Association and Hokuten Trawlers Association, suggested that more than one technique be employed for biomass estimates. He felt the plan is adequately flexible as it now stands, but said that if specific problems in the plan must be addressed, it should be done by amendment rather than withdrawal of the plan.

Norm Cohen, testifying on behalf of natives of western Alaska, urged the Council to take a good look at the herring AIC formula to insure its applicability.

Council Action

Don Collinworth moved that the Bering-Chukchi Sea Herring Fishery Management Plan be withdrawn from Secretarial review so the necessary changes to the problem areas noted by the PMT can be made; seconded by Bob Mace. There being no objection, it was so ordered.

Request for Winter Joint Venture Herring Fishery

Marine Resources Company requested that the Council release the unharvested portion of the herring OY for an offshore winter

joint venture fishery. Although the fishery is still regulated under the PMP, NMFS asked for the Council's views on the proposal. Kenneth R. Petersen, American Fisheries Products of Seattle, wrote a letter to the Council indicating his company's desire to harvest the surplus offshore, but said they had not decided whether to do it on their own or in a joint venture with MRC.

The Advisory Panel defeated by a vote of 10 to 5 a motion to allow a high seas harvest of 3,000-6,000 mt of herring in the Bering Sea. The AP recommended that if the Council allows the potential surplus to be harvested at all that it be granted to the domestic fishery.

The SSC reviewed the MRC request for a high seas herring fishery and determined that, in accordance with the procedure outlined in the FMP, as modified by the PMT and SSC, there is a surplus of herring. The SSC estimated that the surplus ranges from 2,500 mt to 4,800 mt and noted that in accordance with the plan, the surplus would only be available until April 1, 1982. The SSC recommended that any high seas fishery which may be authorized include a scientific sampling program to gather data for future management of the herring fishery, such as using scale analysis to identify Bering Sea herring stocks.

Public Testimony

Richard Goldsmith, Executive Director of the North Pacific Fishing Vessel Owners Association, testified in favor of granting the surplus of herring to the domestic operations which have expressed an interest in harvesting it.

Norman Cohen, representing natives of western Alaska, said that since domestic processing capacity is available for the surplus of herring, the Council should not, and must not by virtue of the Act, allow it to be taken in a joint venture operation. He said the people of western Alaska are trying to become economically solvent by developing a small scale herring fishery and they should receive first opportunity to take any herring surplus which may be available.

Mick Stevens of Marine Resources Company asked for the Council's endorsement of MRC's request to conduct a winter joint venture offshore herring fishery between January and April, 1982. MRC offered to provide at-sea facilities for biologists to conduct independent stock condition studies.

Larry Cotter, representative of International Longshore Worker's Union and Advisory Panel member, said that MRC's request deserves no consideration at all so long as domestic processing capability is available. He encouraged the Council to allocate any available surplus to the developing native herring fishery.

Council Action

The Council discussed the policy questions involved with an amendment to the PMP to allow a joint venture fishery on the surplus herring stocks, including the need for agreement between the Alaska Board of Fisheries and the Council on herring management philosophy. There was disparity among Council members as to whether the surplus was real or a "paper" surplus.

Harold Lokken moved that the Council recommend to the Regional Director, NMFS, that a joint venture herring fishery of 2500 mt be allowed under the Preliminary Management Plan; seconded by Bob Mace. Upon roll call vote, the motion failed as a result of a tie, with Council members Demmert, Specking, Collinsworth, and Brooks casting negative votes.

E-3 King Crab FMP

Review of FMP and Supporting Documents

At the September 10-11 Council/Board meeting the staff was instructed to complete the Bering Sea/Aleutian Islands King Crab Fishery Management Plan (Draft #11 dated September 22, 1981) and prepare all necessary supporting documents (DEIS and DRIR) for review and possible final approval at the September 24-25 Council meeting. The Executive Director explained that if approved by the Council at this meeting, the package would be sent to the Region for preliminary review. Upon completion of the Region's review, the package would be corrected, if necessary, and sent to Washington, D.C. to begin Secretarial review. Once the Central Office has had an opportunity to look over the package, a small workgroup plans to meet with the reviewers in Washington, D.C. to answer questions, clarify the Council's position on certain matters, if necessary, and work to resolve any problems which may exist between the Central Office and the Council.

The SSC reviewed Draft #11 with particular emphasis on Section 4.1, Determination of Optimum Yield, in light of the recent stock assessment results and actions of the Board of Fisheries. The SSC felt that the ABC approach specified in the draft plan for the Bristol Bay management area will continue to be a source of contention between the Board and Council because of the requirement that ABC be set equal to the maximum catch which will maintain the minimum required spawning stocks. The SSC felt that the Board's actions indicated a preference for a more conservative management approach in establishing ABC for this management area. The SSC again affirmed its support of the procedure contained in the Draft FMP for determining ABC for the Bristol Bay management area and suggested that the Council discuss with the Board the method for moving from ABC to OY.

Subject to several minor technical modifications, the SSC recommended that the Council approve Draft #11 for Secretarial review.

The Advisory Panel passed the following motion by a vote of 12 to 4:

"Whereas the Alaska Board of Fisheries has provided sufficient conservation and management for the king crab fishery off Alaska; and,

Whereas an FMP for king crab would impose unnecessary regulatory burdens and increased costs to the industry,

the Advisory Panel recommends to the Council that action on the proposed King Crab FMP be terminated and a finding made and communicated to the U.S. Secretary of Commerce that no need for a king crab FMP exists."

The majority felt that the State has successfully managed the king crab fishery on a time-tested and proven philosophy which has provided a profitable development climate for the multi-million dollar industry; that the MFCMA does not require the Council to develop an FMP for king crab; that the Alaska Board of Fisheries bears the weight of direct regulatory responsibility for their actions and is, therefore, closer to the consequences of their management decisions than the Council would be in their advisory capacity under federal management; that the Board and ADF&G have intimate knowledge of the king crab management regime and have the management and enforcement machinery, experience, and empirical knowledge which cannot be duplicated by the federal government; that the allegations of regulatory discrimination by the Board and unfair treatment of non-residents in State Courts are unfounded and unsubstantiated; that the increased regulatory requirements of an FMP and the associated processes would be unnecessarily burdensome to the industry; and that an FMP would further divert valuable human and financial resources from those fisheries which are truly in need of conservation and management.

The minority objected to the motion because no formal analysis has been conducted to ascertain that Alaska's regulatory system has, in fact, provided "sufficient conservation and management" for the king crab fishery or accomplishes the objectives of the MFCMA. The minority contended that because by law the Board of Fisheries must be responsive to the interests of the State and its citizens, it has discriminated against non-residents involved in the fishery; that the MFCMA requires that a fishery management plan be developed for this fishery; and that Alaska has no authority to regulate non-resident vessels fishing for king crab in the FCZ.

Due to the increasing number of complaints from crab fishermen of lost pots in the Pot Sanctuary to foreign trawl activity, the Advisory Panel suggested that the Council coordinate a meeting for the Ad Hoc Crab Pot Storage Workgroup to meet with appropriate ADF&G, Coast Guard, NMFS, and other appropriate agencies to determine if a different area can be designated for pot storage.

Public Testimony

Richard Goldsmith, Executive Director of the North Pacific Fishing Vessel Owners Association, and Dennis Petersen, Acting President of NPFVOA, opposed the management regime proposed in Draft #11 of the King Crab Fishery Management Plan. Mr. Goldsmith referred the Council to his written testimony dated September 21, 1981, made a part of these Minutes as Appendix I.

Mr. Petersen said there have been many incidences of gear conflicts which appear to be the result of trawl snagging in the Bering Sea Pot Sanctuary. He said that losses of as many as 75 pots have been reported, and suggested that if an amendment will be required to close the gear storage area to trawlers next season, work on the amendment should begin at once.

Preliminary Report on 1981 King Crab Fishery

Bob Otto, NMFS, and Fred Gaffney, ADF&G, reported that as of September 20, the Kodiak fishery had landed 1.7 million pounds compared to 1.9 million pounds last year. Two hundred vessels are registered in the fishery; fishermen are getting approximately \$1.35 per pound.

Area Q has 33 registered vessels, but no landings as of the 20th. Area T (Bristol Bay) had landings of slightly over 3.9 million pounds compared to 20 million pounds at the same time last year. The South Peninsula district already has several closed areas. That fishery is expected to continue until the first week of October. As of September 20, fifty-six vessels had taken 1.6 million pounds.

Overall catch per unit of effort this year is averaging 24 crabs per pot compared with 61 per pot in 1980. The crab appear to be fairly widely distributed with no real "hot" spots. Ten catcher/processors have taken 25% of the harvest to date. The total harvest is expected to be near 40 million pounds.

Council Action

The Council discussed at length the need for including a general history of the king crab fishery in the fishery management plan. The staff felt that this would be a difficult, time-consuming writing assignment which could slow review and implementation of the plan. They suggested that the cover letter to D.C. include a paragraph noting that this section will be forwarded at a later date. Several Council members expressed concern over sending an incomplete package for review.

Bob Mace moved that the Council approve the September 22, 1981 Draft #11 of the Bering Sea/Aleutian Islands King Crab Fishery Management Plan, with the modifications noted by the SSC, for submission to the Region for preliminary review and then to Washington, D.C. for Secretarial review, followed by a meeting with the Central Office staff as outlined by the Executive

Director. The motion was seconded by James Brooks. Upon roll call vote, the motion carried with Council members Lokken and Woelke in objection. The report of the minority will be included in the FMP package and is made a part of these Minutes as Appendix II.

The Council asked the Bering Sea/Aleutian Islands Groundfish Plan Maintenance Team to investigate the alleged gear conflict problems in the Bristol Bay Pot Sanctuary and recommend a course of action to the Council.

NRC Research Proposal

The Council, AP, and SSC reviewed a proposal from Natural Resources Consultants to examine the NMFS king crab trawl survey design, analysis of data, and eventual use of results by fishery managers. The National Bank of Alaska and others offered to assist in funding the study.

The Advisory Panel suggested that the Council first evaluate the need for this type of research and if the need does exist, then distribute an RFP for a Council-funded research project. The AP said that ADF&G and NMFS already provide the information proposed in the study; that the proposed study is not necessary and can wait until after results of the 1981 fishery are evaluated this winter; that it is improper to award a contract without first circulating an RFP; that NMFS biologists could provide the same information if requested; and funding contributors other than the National Bank of Alaska were unidentifiable and/or non-committal.

The SSC felt it premature to undertake any studies on the management process, strategies, and procedures for the fishery at this time. They suggested that the fishery be closely monitored and at the end of the season its performance compared with the results of the 1981 survey and resulting management strategies. After that analysis the Council may wish to initiate an appropriate study under the Council system for review of potential research proposals.

Council Action

The Council discussed at length the proposed study and its primary focus. Some Council members felt that the study would not focus on the biological question of king crab stock condition but rather on the management philosophy employed over recent years. It was noted that the proposed study was not designed to consider possible environmental factors contributing the decline in recruit male crabs. Bob Otto said that NMFS is now conducting a thorough analysis of the 1981 survey data to consider biological and environmental implications. Mr. Otto noted that the harvest last year was extremely high; an average harvest range is, in fact, more in line with the expected harvest for the 1981 season.

Bob Mace moved that the Council defer final consideration of the NRC proposal until the December Council meeting, when more data on the current season will be available; seconded by Don Collinsworth. There being no objection, it was so ordered.

E-4 Tanner Crab FMP

Plan Coordinator Steve Davis explained that Amendment #6 has been delayed by OMB's objections to some of the reporting requirements contained in the amendment. OMB alleges that the requirements are unnecessary because they parallel state regulations.

Amendment #7, which established new bairdi OY's and eliminated the TALFF for opilio, was published in the Federal Register on September 3 as a proposed rule.

E-5 Gulf of Alaska Groundfish FMP

Jeff Povolny, Groundfish Plan Coordinator, reviewed a report of the Gulf of Alaska PMT assessing the current management regime and proposing methods to enhance management flexibility. Because the plan uses a species specific management regime, amendments often lag from one to two years behind the current scientific information on status of stocks. The PMT was concerned that continual regulatory lag may retard development of the domestic groundfish fishery and proposed a method whereby the Regional Director, in consultation with the Council, could determine OY's for the upcoming fishing year. The OY for each species/species group would be apportioned to the western, central, and eastern regulatory areas of the Gulf of Alaska on the basis of biomass (when available) or recent catch proportions. Under this procedure, the lengthy amendment process for establishing OY's for the beginning of each fishing year would be eliminated and the Gulf of Alaska groundfish fishery would be managed using information one-year old or less compared to the two-year old status of stocks information under which the fishery is now managed.

The PMT recommended that DAH be set for the beginning of each fishing year at the previous year's harvest level modified appropriately by changes in projected processing capacity and/or intent to process and harvesting capacity and/or intent to harvest. If necessary the DAH may be increased during the fishing year by apportionment of reserves. The PMT recommended amending the FMP to provide a framework which would allow the Regional Director to establish DAH's in this manner, thereby eliminating the need for FMP amendments when DAH's need to be revised.

The PMT also recommended that the FMP be reorganized so that scientific data is put into annexes and removed from the body of the FMP, such as has been done with the Bering Sea/Aleutian Islands Groundfish FMP. This would facilitate the means by which annual changes to the status of stocks information, OY, DAH, reserve, and TALFF are reflected in the FMP itself.

The PMT presented a time table for reorganization of the FMP beginning with redrafting the FMP in October or November, 1981 and projected Secretarial review commencing in May or June, 1982. The PMT suggested that the Council contact NMFS-Juneau, the Northwest and Alaska Fisheries Center, Alaska Department of Fish and Game, and the International Pacific Halibut Commission to request personnel assignments and funds commitments for the reorganization of the FMP.

The Council, SSC, and AP reviewed proposed Amendment #11, which would lower the OY for sablefish in the Gulf of Alaska FMP; a draft paper on prohibited species incidental catch problems in the Gulf of Alaska; proposed amendments from the Alaska Longline Fishermen's Association, Japanese North Pacific Longline and Gillnet Association, and Japan Deep Sea Trawlers Association; a report from ADF&G on the need for reporting domestic groundfish catches landed outside of Alaska; and a report from the Northwest and Alaska Fisheries Center on the status of the sablefish resource; and a draft Gulf of Alaska prohibited species amendment.

The Advisory Panel recommended that Amendment #11 to reduce the OY for sablefish and the proposals by ALFA and the Japanese Longline and Gillnet Association be released for public comment.

The SSC did not receive the subject documents in time to conduct an in-depth review, but did comment on what they understood to be the proposed amendments. The SSC recommended expanding Table 1 of the proposed prohibited species amendment to include data on how the reduction would be apportioned among the three fishing areas. Subject to this change, the SSC recommended that the prohibited species amendment be released for public review.

The SSC opposed sending the amendment to reduce sablefish EY/OY to public review because the SSC had not had sufficient time to review and support or reject either the values proposed in the amendment or the background documentation.

The SSC took no position on the amendments proposed by ALFA and the Japanese Longline and Gillnet Association, but was concerned about sending proposed amendments to public review without some internal review for reasonableness.

The SSC recommended that the Council develop a step-by-step procedure for amendment packages similar to the procedure for reviewing programmatic research funding requests. Sufficient time must be provided to allow the Council staff to develop an amendment package and then for the AP and SSC to review each of the proposals.

Public Testimony

Steve Johnson, representing the Japan Deep Sea Trawlers Association, questioned the advisability of sending the Gulf of Alaska prohibited species amendment to public review in its

present form. He said the PMT had merely taken Bering Sea Amendment #3 and converted it to the Gulf of Alaska without reviewing its appropriateness. As an example, Mr. Johnson cited figures included in Table 1 on page 3 of the amendment which would put a harvest of 104 mt of groundfish at risk to save 20 king crabs. Mr. Johnson suggested that this example represents just one of many assumptions in the package which require complete review before releasing the Gulf prohibited species amendment for public review.

Paul MacGregor, representing the Japanese North Pacific Longline and Gillnet Association, said that any reduction in sablefish OY would severely impact the Japanese longline fleet. Mr. MacGregor said that the PMT had made its decision to reduce the sablefish OY based on only two reports available out of five reports which all will be available in a reasonable amount of time. He noted that even the SSC felt it was premature to reduce OY in the absence of the other pertinent background information.

Greg Baker, president of the Alaska Longline Fishermen's Association, spoke in favor of ALFA's proposed amendments to the Gulf of Alaska Groundfish FMP. These proposals include limiting the harvest of sablefish east of 140°W longitude to hook and line gear only and a gulf-wide closure of the sablefish fishery from November 15 to March 15. Mr. Baker said that ALFA strongly favors reducing the sablefish OY because fishermen believe there are serious stock problems, particularly in the eastern regulatory area.

Eric Jordan, testifying on behalf of the Sitka ADF&G Advisory Committee, favored sending Amendment #11 to public review. He said that something must be done immediately from a resource standpoint to save the sablefish fishery.

Council Action

The Executive Director said that procedurally it would be beneficial to send Amendment #11 to public review at this time. Public review of the prohibited species amendment could be deferred until the SSC's suggested changes and further in-house review have been completed. He asked State Department representative Chris Dawson to consider the potential reduction in sablefish OY at the time that foreign allocations are made.

Bob Mace moved that the Council send to public review the sections of Amendment #11 dealing with the reduction of sablefish OY and reporting requirements, and that the Alaska Longline Fishermen's Association and Japanese North Pacific Longline and Gillnet Association be given the opportunity to include their proposed amendments at this time if they choose to do so. The prohibited species amendment would be addressed in the general re-write of the FMP. The motion was seconded by Charles Woelke. There being no objection, it was so ordered.

The Council asked the Executive Director to write to the agencies which would be involved in the re-write of the Gulf of Alaska Groundfish FMP asking for commitments of personnel and resources to undertake this task early in 1982.

E-6 Bering Sea/Aleutian Islands Groundfish FMP

The Bering Sea/Aleutian Islands Groundfish PDT met with Council, AP, and SSC subgroups on August 18 and 19 to draft the final form of Amendment #3 according to the Council's instructions at the July Council meeting. The latest version of the amendment differs from previous drafts in that reductions in prohibited species catches are calculated based on catch rates. Two main objectives of the amendment and a suggested Council policy statement regarding the domestic trawl fishery have also been incorporated into the draft. The draft amendment was mailed to the public on September 3. Council approval of Amendment #3 was required to submit the amendment for Secretarial review.

The Plan itself is scheduled to be implemented on January 1, 1982. Amendment 1a, protection of chinook salmon, and Amendment #2, increasing Pacific cod OY and yellowfin sole DAH, will be implemented simultaneously with the FMP. Amendment #1, the multi-species optimum yield, is not expected to be implemented until after implementation of the FMP.

John Harville submitted for Council consideration the following statement of position on what the Council expects of domestic groundfish fishermen to control their catches of prohibited species:

"The North Pacific Fishery Management Council believes that domestic fishermen targeting on the groundfish fisheries of the Bering Sea and Aleutians share a responsibility to avoid to the fullest extent practicable the incidental taking of halibut, salmon, king crab, and Tanner crab. They also share with the North Pacific Fishery Management Council a responsibility to develop an accurate information base concerning these species through maintenance of log-books, accurate reporting of catch, and contributions to knowledge of fish distribution, behavior, etc.

"The North Pacific Fishery Management Council advocates and strongly supports development of domestic harvesting and processing of the groundfisheries of the Bering Sea and Aleutian Islands. To avoid any unnecessary impediments to that development, the Council will not at this time recommend any regulations of the domestic fishery specifically designed to protect "prohibited" species. However, the Council also is fully committed to protection from needless waste of stocks of salmon, halibut, king crab, and Tanner crab which are fully utilized in other domestic fisheries. Furthermore, in accordance with MFCMA provisions, the Council has a continuing obligation to assure their management in accordance with optimum use objectives. Therefore,

the Council charges domestic fishermen to develop their fishing strategies, techniques, and practices with full regard for and attention to the objectives of the Council for protection of species not properly a target of those groundfisheries, as demonstrated by the measures taken to assure protection by foreign fleets. The Council urges domestic fishermen to study the techniques used by foreign fleets to meet Council requirements for protection of non-target species, to adapt those techniques where appropriate for domestic use, and to experiment actively with gear modifications, selection of time and area fishing strategies designed to avoid concentrations of prohibited species, and other techniques designed to develop a clean fishery. The Council will work with domestic fishermen to facilitate transfer of useful information and technology from foreign sources, and to insure the collection of relevant fisheries data and information from all sources, foreign and domestic.

"The Council will follow the development of Bering Sea and Aleutian Island groundfish fisheries with much interest, and with particular attention to the success of those fisheries in avoiding unnecessary or excessive taking of prohibited species.

"The Council hopes that through voluntary measures developed with the cooperation of domestic fishermen, stocks of salmon, halibut, king crab, and Tanner crab can be sufficiently sequestered from unnecessary and wasteful bycatch to make unnecessary the imposition of special protective regulations upon the domestic groundfish fishery."

The Advisory Panel reviewed the status of the Bering Sea/Aleutian Islands Groundfish FMP and Amendments #1, 1a, and 2 and asked the Council to send a telegram to the Secretary of Commerce in support of immediate implementation of the Bering Sea/Aleutian Islands Groundfish FMP. The AP reaffirmed its support of the NMFS fee schedule in light of comments contained in a letter from the Korean Trawler's Association.

The Advisory Panel reviewed the September 3 draft of Amendment #3 and John Harville's draft Council position statement. The AP adopted the Harville draft as a substitute for the current annex to Amendment #3 and approved Amendment #3 for Secretarial review after making a change in wording under "Establishment of Targets for Prohibited Species Catches" and a change in the formula for determining allocation of PSC's. The formula suggested by the AP was:

$$PSC_{ij} = \left(\text{Annual Catch Rate} \times \text{Percentage Target Reduction}_{ij} \right) \div \left(\text{TALFF}_i + \text{Reserves}_i \right)$$

The change was suggested because the AP felt the formula in the draft amendment does not take into consideration the increase in OY (1,400,000 mt to 2,000,000 mt) established by the Council in January. These OY ranges are from 11% to 62.5% greater than the 1977-80 averages used to establish the base catch rate. The AP contended that under the PDT's formula, incidental catches of prohibited species for 1982 or 1983 would increase regardless of the health of the prohibited species. For instance, in 1982 the target for halibut is 90% of 3,182 mt, or 2,863 mt. Using the PDT's formula would result in a 47% over-catch of halibut.

The AP felt that their modified formula will take into account annual changes in the abundance of the overall groundfish resource. If the status of the prohibited species is changed, the target figures can be increased or decreased under the annual review section.

The SSC reviewed the September 3 draft of Amendment #3 and extensively discussed interpretations of certain sections of the amendment, primarily those dealing with salmon, and recommended specific modifications. Specific recommendations of the SSC as outlined in their Minutes are made a part of these Minutes as Appendix III. Subject to the suggested modifications, the SSC recommended that the Council approve Amendment #3 for Secretarial review.

The SSC encouraged the Council to specify management objectives for the domestic fleet and applicable PSC levels in order for the PMT to develop a prohibited species management regime for the domestic fleet.

Public Testimony

Norman Cohen, representing Nunam Kitlutsisti, asked the Council to send a strong letter to Ted Kronmiller of the State Department, NOAA Administrator John Byrne, and Assistant Administrator Bill Gordon urging implementation of the PMP amendment to limit the interception of western Alaska chinook salmon by the foreign trawl fleet for the 1981 fishing season.

Mr. Cohen said that Amendment #3 should spell out that the domestic fishery must take precedence over the foreign fisheries. He suggested that the most recent changes in the draft made by the PDT may have been detrimental. Mr. Cohen supported the changes suggested by the SSC, but noted that the 93% figure for chinook salmon was the figure agreed upon in negotiations between the natives of western Alaska and the Japanese trawl associations.

Steve Johnson, representing Japan Deep Sea Trawlers Association and Hokuten Trawlers Association, said that the September 3 draft of Amendment #3 is considerably better than previous drafts, although he was not sure how the foreign fleet would be able to live within its bounds.

Mr. Johnson urged the Council to leave the 93% factor for chinook salmon as agreed upon by the Japanese trawl associations and the western Alaskans. The difference in the two is marginal, and using 93% would be simpler. He said that the salmon roll-over limit in the draft was meant to apply to all salmon, not just chinook, and suggested that this may be a misunderstanding in the draft.

Mr. Johnson agreed with the SSC that groundfish catches related to government research should not count against that nation's direct allocation.

Council Action

John Harville explained that the intent of his position statement is to avoid specific PSC limits for the domestic fishery at this time. He felt the Council should encourage domestic groundfish fishermen to develop techniques to avoid catching prohibited species which are the basis of support for other sectors of the industry.

Bob Mace suggested that perhaps the Council should give a little more indication of the bounds in which it expects the domestic groundfish fishery to operate. Once those boundaries are reached or exceeded, the domestic fishery can expect the Council to take specific, more extreme action.

Harold Lokken stressed that the domestic industry must be put on notice that it cannot expand to the unreasonable detriment of other fisheries in the area.

Don Collinsworth moved that the Council substitute the Harville draft for the existing annex to Amendment #3; seconded by Charles Woelke. There being no objection, it was so ordered.

The Council discussed with SSC Chairman Don Rosenberg, AP Chairman Bob Alverson, and Plan Coordinator Jeff Povolny the pros and cons of the AP's modification to the formula for determining allocation of PSC's. Mr. Alverson contended that using the PDT's formula may result in taking more than the prohibited species target level if an increase in OY results in an increase in TALFF. Jeff Povolny explained that under the annual review provisions of the amendment, the Regional Director will, in consultation with the Council, review prohibited species catch calculations and make adjustments as necessary to respond to such conditions as changes in the stock condition and abundance of prohibited species; changes in stock condition and abundance of target groundfish species; impact on operational ability of foreign fisheries to take their TALFF; and the degree of socio-economic impact of prohibited species catches on domestic fisheries dependent on them. The Council may also review annually the target rates and period of reduction and the percentage reduction in rates from the previous year which are used to calculate PSC's. In making annual adjustments to PSC's, the Regional Director, in consultation with the Council, will consider all of the following, in order of priority:

1. the need to protect prohibited species for biological and other conservation reasons;
2. the impact of PSC's on the domestic fisheries dependent on these species;
3. the impact of the PSC regulations on development and operation of domestic groundfish fisheries; and
4. the impact of PSC's on the foreign groundfish fisheries.

Once determined, the final PSC's shall be established through field orders by the Regional Director.

PDT Chairman Loh-lee Low agreed that what the Advisory Panel contends is true, but stressed that the Council must keep in mind that the rate of prohibited species catch is still reduced. If TALFF does go down, then the prohibited species catch goes down. If TALFF goes up, the prohibited species catch will go up, but the rate of catch goes down. The concept involves a percent of the total catch rather than specific numbers of fish.

Jim Brooks moved that the Council approve for Secretarial review the September 3 draft of Amendment #3 to the Bering Sea/Aleutian Islands Groundfish FMP, substituting the Harville draft for the current annex to the plan; incorporating all the modifications suggested by the SSC except that the figure used for chinook interceptions will be 93% as recommended by the parties to the negotiated agreement; including an additional footnote as suggested by Pat Travers referencing the text of the FMP itself regarding changes in OY; providing for the roll-over procedure to begin in 1981 for Japan (party to the western Alaskans' agreement) and in 1982 for other countries; and including such other text changes as may be necessary resulting from combining chinook and total salmon in Table 1. The motion was seconded by Bob Mace. There being no objection, it was so ordered.

Don Collinworth moved that the Executive Director write a letter to Ted Kronmiller, John Byrne, and Bill Gordon urging implementation of the PMP amendment to limit the interception of western Alaskan chinook salmon by the foreign trawl fleet for the 1981 season; seconded by Harold Lokken. There being no objection, it was so ordered.

It was the consensus of the Council that the Harville Annex to Amendment #3 should be published in the Council Newsletter as an effective means of communicating to the industry the Council's expectations of the domestic groundfish fishery.

F. CONTRACTS, PROPOSALS AND FINANCIAL REPORTS

F-1 Status of Contracts and RFP's

Council action was required for final approval to Contract 80-3, "Seasonal Use and Feeding Habits of Walruses in the Proposed

Bristol Bay Clam Fishery Area", award of the contract for a study for "Determination of Stock Origins of Chinook Incidentally Caught in Foreign Trawls", and an amendment to Contract 81-4, "Compilation and Evaluation of Data on Feeding Habits and Food Requirements of Marine Mammals in the Bering Sea" for additional funding for a computer model.

The Finance Committee recommended that final payment in the amount of \$17,649.40 be made for Contract 80-3, bringing the total of this contract to \$97,220.

The Finance Committee recommended award of Contract 81-5, "Determination of Stock Origins of Chinook Salmon Incidentally Caught in Foreign Trawls in the Alaska FCZ" to the Fishery Research Institute. This is a two-year contract which will be reviewed after one year for approval of the second year's funding.

The Finance Committee recommended approval of the additional \$3,100 to Contract 81-4 for a computer model to be done by Gordon Swartzman.

Don Collinworth moved that the Council accept the recommendations of the Finance Committee for action on Contracts 80-3, 81-4, and 81-5; seconded by Bob Mace. There being no objection, it was so ordered.

F-2 Financial Status Report

Information only - no action required.

F-3 Report on Council Audit

The Finance Committee reviewed the draft audit report from Price Waterhouse and recommended final payment on this contract upon receipt and approval of the final report by the Executive Director. *The Council unanimously adopted the recommendation of the Finance Committee.*

F-4 FY 82 Programmatic Research Funding Request

The Finance Committee reviewed and recommended adoption of the proposed Process for Identifying and Requesting Funding for Needed Fisheries Research as presented to the Council. The Committee suggested, however, that Advisory Panel review should be made part of steps 2 and 4 of the procedure. *The Council unanimously adopted the recommendation of the Finance Committee.*

G. PUBLIC COMMENTS

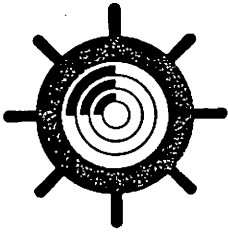
No further testimony was presented to the Council.

H. CHAIRMAN'S CLOSING COMMENTS AND ADJOURNMENT

There being no further business to come before the Council, the 44th Plenary Session of the North Pacific Fishery Management Council adjourned at 3:55 p.m.

LIST OF APPENDICES

- Appendix I: Richard Goldsmith's Written Testimony Dated
9/21/81 on the King Crab FMP
- Appendix II: Report of the Minority on the King Crab FMP
- Appendix III: SSC Report on Amendment #3 to the Bering Sea/
Aleutian Islands Groundfish FMP



**North Pacific
Fishing Vessel
Owners' Association**

September 21, 1981

Clement V. Tillion
Chairman
North Pacific Fishery Management Council
P.O. Box 3136 DT
Anchorage, Alaska 99510

Dear Mr. Tillion:

This letter contains the Association's observations on Draft #11 of the King Crab Plan (dated August 15, 1981). Since Draft #11 does not differ markedly from other versions of the plan prepared after September 15, 1980, these comments, generally, will not go into lengthy recitation of our initial and continued objections to the Council's proposed actions; the Association will only speak to those provisions of Draft #11 which vary from earlier versions. However, after reading this letter, one should then reread the Association's letters of December 6, 1980, March 23, 1981, May 18, 1981, and May 28, 1981 and consider them to be part of these comments; those observations are still valid in light of the course of action which the Council continues to pursue for the management of the king crab fishery.

GENERAL OBSERVATIONS

Before addressing specific sections of Draft #11, there are some general comments which the Association would like to make about the Council's proposed management scheme for the king crab fishery.

Delegation To The State Is Illegal

As it has indicated in its earlier comments, the Association believes that a delegation of the Secretary of Commerce's regulatory powers to the Alaska Board of Fisheries is not a legal option under the Magnuson Fishery Conservation and Management Act (MFCMA); there is no authority in the MFCMA for such a delegation. Also, if the Framework FMP were adopted as written, the Board of Fisheries would have such wide latitude in establishing regulations that the intent and provisions of the Magnuson Act would be undermined. This result would not be changed even if, as the Council has proposed, the Secretary were to withhold giving some of his regulatory powers to the Board.

The State Regulatory System Favors Residents

By using the Magnuson Act to place the Board of Fisheries in the position where it is still able to determine the extent of the regulations for the king crab fishery, the Council only perpetuates a system which has been set up solely for the benefit of Alaska and its residents. As we have specifically pointed out in our earlier comments, the allegiances of the Board and its local advisory committees (which have not only the power to advise the Board, but also to close local fisheries) are--by law--pledged to the State. Only Alaska residents can serve on these two bodies; consequently, non-residents cannot enter these inner sanctums and have a meaningful voice in determining how the offshore fleets will be able to harvest the king crab resource.

The Board Has Not Followed The Framework

In view of the failures of the Board of Fisheries to follow the Framework's criteria for promulgating regulations for the Bering Sea king crab fishery, the Association is at a loss to understand why the Council wishes the Board to continue to have the central role in managing this fishery. As we indicated in our May 18, 1981 letter to the Council, the Board at its March meeting breached the Joint Statement of Principles by ignoring the regulation setting standards articulated in the Framework. More recently, the Board at its September meeting in Kodiak again ignored the Framework and set an exploitation rate for the Bristol Bay fishery which was far below that required by the plan. Both times the Council acquiesced to the Board. This acquiescence by the Council does nothing to convince us that the Council will be the dominant management body for fisheries in the Fishery Conservation Zone.

In addition, the Board has not been held accountable for its refusal to reconsider the opening date for the 1981 Bristol Bay king crab fishery and its almost simultaneous agreement to reopen discussion on a second season in Kodiak for 7-1/2 inch crab. Such actions by the Board appear, at best, to be arbitrary, and once again, reinforce the conviction that the Board is not really concerned about the interests of non-residents.

The Board Cannot Be The Primary Regulatory Body

The FMP narrative describes the proposed system of implementation

as offering "fairness and equity to all...." Apparently, the drafters of the FMP believe that by grafting some "procedural safeguards" onto the Board of Fisheries system they can gloss over this system's inequities, and thus win the hearts and minds of the non-resident fleet. However, our four previous sets of comments are replete with examples of the discrimination imposed upon non-resident crab fishermen by Alaska's management measures—edicts of the Board of Fisheries. If the Board were to remain at the core of the regulatory system, no amount of procedural safeguards would allow the system to work smoothly and equitably, as Congress mandated. Whoever initially controls the nature and extent of regulations ultimately shapes the tenor of the entire management process. Procedural safeguards, plan criteria, and National Standards cannot keep the members of the Board from manifesting, consciously or otherwise, their loyalties and sympathies to their state and to their neighbors. For the MFCMA conservation and management process to succeed, the Board of Fisheries must not be able to continue to play the dominant role in the management of the king crab fishery.

Federal Courts Must Rule on MFCMA Regulations

The Council is in error in its belief that the Alaska court system would be the forum for challenging regulations if the Board were to be delegated MFCMA regulatory powers. Section 311(d) of the Magnuson Act unequivocally states :

"The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act." (emphasis added.)

Illegal Fishing Is A Civil Not Criminal Offense

The Council should also be aware that Congress, in the MFCMA, purposely characterized illegal fishing activities by domestic fishermen as civil offenses; generally, criminal sanctions are reserved only for actions directed against officers trying to enforce the Magnuson Act. If the Council's proposal to delegate regulatory powers to the State were accepted, Congressional intent would be thwarted: in Alaska, violations of the State's fishing regulations are misdemeanors and offenders are subject to criminal penalties.

The Council Has Not Carefully Examined The State's Regulations

With the exception of a few regulatory proposals which were under consideration by the Board this year, the Council has yet to ask the Board to test its current king crab regulations against the criteria set forth in the Framework Plan. Nor has the Council, on its own, scrutinized these regulations to determine if they conform to the National Standards embodied in the Magnuson Act.

By its inaction, the Council seems to be urging the wholesale adoption of the State's regulations for the king crab fishery—regulations primarily established at the behest of Alaskans for benefit of Alaskans. We are troubled by the Council's failure to carefully examine the rationales behind these regulations. While Congress, in the MFCMA, provided for the Councils to "incorporate.... the relevant fishery conservation and management measures of the coastal States nearest to the fishery" into their plans, it added

a caveat: that those management measures must be "consistent with the national standards, the other provisions of this Act, and any other applicable law."

SPECIFIC COMMENTS ON THE PLAN

Introduction

While in theory a "framework" fishery management plan would enable managers to respond more quickly to changing conditions in a fishery, this FMP does little more than give the Board of Fisheries license to do whatever it wants, whenever it wants. The FMP fails to indicate those conditions which must exist in the fishery before the regulatory body can even consider imposing certain management measures. Furthermore, the FMP does not expressly and emphatically state that the criteria to be examined in setting regulations are the only criteria to which the Board can direct its attention. Nor does the FMP assign a priority to each criterion. For these reasons, the FMP—contrary to the Introduction's assertions—does not provide "clear guidance to the on-going regulatory process...." and "...eliminate duplications of bureaucratic functions...." In fact, if one assumes that a properly constructed framework plan is a valid approach to managing a fishery, then the proposed system is more costly and burdensome than the MFCMA regulatory process. Once a FMP is approved and initially implemented, further promulgations of regulations under the MFCMA consist of three steps: notice of proposed rulemaking, a period of public comment, and publication of final regulations. Since the Secretary promulgates

the regulations, Secretarial review of the regulations for conformity with the MFCMA is inherent in the process. Under the system proposed in the King Crab FMP, not only do the regulations go through the "regular" Board of Fisheries procedures (which require hearings in Alaska), but the Board must hold a meeting in Seattle and also meet with the Council to discuss management of the king crab fishery. Any regulations decided upon by the Board must undergo further scrutiny by the Regional Director, NMFS, and the Secretary of Commerce. One can only wonder how such a bastardized system can purport to achieve savings in time and money.

If bureaucratic functions are "themselves unnecessary to effective resource management where the fishery is entirely limited to the waters off the coast of a single state..." why is the Alaska regulatory system needed? Do not the Board of Fisheries and ADF&G perform "bureaucratic functions"?

Where is any analysis by the Council showing the State of Alaska has had a "longstanding and successful history of regulation" of the king crab fishery? "Successful" in achieving what goals? The Board's policy on king crab resource management is to manage in a manner which "establishes stability and eliminates, as much as possible, extreme fluctuations in annual harvest...." How successful was the Board in achieving this goal this year when it appears the harvest in Bristol Bay is going to be around 40 to 60 million pounds, a drop of over 50% from last year's record catch.

The FMP fails to acknowledge that most of the resource in the area covered by the plan is harvested by non-resident fishermen. These fishermen believe the procedures and roles outlined in the Magnuson Act are necessary to assure all fishermen--regardless of residence--equal access to the resource and an equal voice in participating in decisions.

The Introduction avers that "the framework presents its objectives in detail." In fact, these and earlier comments of ours point out that the objectives lack specificity.

The FMP states

"Ideally, selection of appropriate management measures for the achievement of any objective would be done almost mathematically through the use of standard techniques of population dynamics.*** ...[Due to a lack of information, however, the Council] must rely on less exact means to describe how, and under what circumstances, a given set of measures will be employed to achieve a given set of objectives."

This statement is misleading. It leaves the impression that the FMP's objectives and management measures are strictly related to increases and decreases in the resource, and therefore, loosely drafted circumstances for imposing management measures are somehow excusable. However, upon close examination of the FMP, one finds that most of the management measures are not concerned with the population dynamics of king crab, but with achieving socioeconomic

goals which benefit Alaska and its residents.

Description Of The Fishery Management Unit

In earlier drafts of the King Crab FMP, Kodiak was considered for inclusion in the fishery management unit. Why was Kodiak dropped from the plan, especially after ADF&G Commissioner Skoog detailed the strong economic links between Kodiak and the Bering Sea fisheries in his May 19, 1981 letter to Robert Alverson (attached to our May 28, 1981 letter to the Council)?

Management Objectives

Although the FMP lists the management measures expected to be used in achieving objectives, it does not readily explain how the measures would help reach these goals.

What is the priority ranking for the four secondary objectives?

1. Optimize the Net Value of the Fishery

The plan seems to infer that stabilization of the annual harvest is a goal. Yet, due to environmental conditions and limited knowledge about the resource, it is questionable whether stability is possible to achieve. If current Alaska management practices are designed to eliminate "boom and bust" fisheries, why is the Bering Sea harvest this year only likely to reach 40 million pounds and last year's catch was over 130 million pounds?

What are the "production and marketing standards and requirements"

that management measures should be designed to complement?

2. Minimize the Socioeconomic Impacts of
Conservation and Management Measures

What are the "well-established" harvesting and processing systems and community infrastructures? Why are management measures necessary to protect them?

Where are the areas that king crab has been utilized as a "traditional subsistence food source?" For how long? How is "subsistence" defined? What have been the "past food requirements" for these areas?

3. Minimize Adverse Interactions Among Fisheries

What are these other commercial fisheries which may affect ship and worker availability and processing capacity? How?

What are the trawl fisheries which may interfere with the conduct of the king crab fishery?

What are the species which may be incidentally caught in crab pots? What is the extent (history) of these incidental catches?

Management Measures

1. Determination of Optimim Yield

a. ABC—Bristol Bay

In setting ABC, the FMP is unclear as to whether ABC must be the highest of the catches estimated in the size limit-exploitation

rate table. Again, it is interesting to note that for the 1981 king crab fishery, Reeves' data indicated that fishing above the .8 exploitation rate on 6-1/2 inch crab would not impair the future reproductive potential of the stocks. Yet, the Board of Fisheries would not instruct its staff to allow fishing beyond the .6 exploitation rate. How does this comport with the FMP's directives?

Why doesn't Table A go beyond .8? How are the size limits established?

b. ABC- Adak, Dutch Harbor, and Bering Sea

What are the maximum levels of catch which will not result in declines of female fertilization for these areas?

The FMP notes that fisheries "have not shown any decline in female fertilization" when their minimum size limits and exploitation rates were determined in accordance with the procedures for setting ABC's for Adak, Dutch Harbor and the Bering Sea. However, could exploitation rates higher than .4 have still protected female fertilization, thus resulting in increased yields?

c. OY

If ABC takes into account environmental and ecological factors, why should ecological considerations again influence the determination of OY?

What would be the social or economic reasons for harvesting more

or less than the ABC?

2. Fishing Seasons

What are the approximate dates of the "period from late summer through early winter when crab are in a valuable condition to the fishery"?

In determining season openings, one factor is "timing of the season openings for individual areas relative to one another." Are areas outside of the plan (i.e. Kodiak) to be considered in setting season openings? If so, why shouldn't Kodiak be included in the plan if its fishing activities are allowed to influence fishing in the Bering Sea and Aleutian Islands areas?

By noting that simultaneous openings "[result]... in lesser utilization of the capacity of large vessels that could otherwise fish a number of areas in succession," isn't the FMP inferring that simultaneous openings are used to protect the small boat fisheries from influxes of large vessels? Isn't this discrimination?

How are season openings "important in determining prices, the distribution of floating processors, and the ability to meet marketing commitments"? Why is the FMP concerned with these activities?

3. Gear Placement

Another factor should be the costs of onshore loading and unloading facilities versus the costs of at sea storage.

Why is the scope of the regulations affecting gear placement limited to seven days before and after a season?

4. Gear Storage

By whom is land storage preferred?

The State has an enforcement program to determine whether pots are stored in a non-fishing condition. However, given the requirement for vessel tank inspections, do the benefits of such a program really outweigh the costs?

5. Registration Areas

The FMP notes that

"Historically, exclusive registration areas have been relatively small... [and] are close to shore...."

However, what this draft of the FMP fails to mention is that small, near-shore areas were purposely designed as exclusive areas in order to allow small vessels, owned by Alaskans, to harvest crab without worrying about incursions on "their" resource by large vessels, owned primarily by non-residents of Alaska. Setting aside small areas as exclusive made it economically infeasible for the large boats to fish there. The only area lacking the historical characteristics of an exclusive area is Bristol Bay. Bristol Bay was carved out of the Bering Sea non-exclusive area and designated as "exclusive" so the small boat fleet of Dutch Harbor would not have to compete with the large out-of-state vessels fishing in the Bering Sea and selecting Dutch Harbor as their sole exclusive area.

The past drafts of the FMP have been very forward in stating that the socioeconomic impact on local communities was a major factor in designating an area as "exclusive" or "non-exclusive." In this draft, such a statement is conspicuous by its absence.

6. Reporting Requirements

The FMP is unclear as to whom catcher/processor reports or processor reports are to be submitted. To the Secretary of Commerce? To the State of Alaska?

If data is to be submitted to the State, will these FMP reporting requirements be affected by Section 303(d) of the MFCMA and 50 CFR Part 603, which are concerned with the confidentiality of statistics?

Procedures For Plan Implementation

May the Regional Director prevent a State regulation from taking effect in the Fishery Conservation Zone if he does not consult with the Council? For example, what if time does not allow consultation?

The Introduction to the FMP states that the Board of Fisheries will hold at least one annual shellfish hearing in Seattle. Is this hearing different from the joint Council-Board public hearing in the State of Washington prior to the mandatory annual joint meeting of the Council and Board?

It is unclear whether the mandatory annual joint meeting of the Board and Council will take place before, after, or at the same time the Board holds its annual shellfish meeting.

Joint Statement of Principles and Initial Regulations
Implementing the FMP

At this time, these documents are being redrafted; therefore, the Association reserves its right to comment until the materials are again distributed for public review.

It is hoped these observations on Draft #11 of the King Crab Fishery Management Plan will be of assistance to the Council.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Goldsmith". The signature is fluid and cursive, with a large initial "R" and "J".

Richard J. Goldsmith
Executive Director

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

MINORITY REPORT

This statement outlines the views of the minority members of the North Pacific Fishery Management Council in the vote taken by the Council on September 25, 1981 in approving the Bering Sea/Aleutian Islands King Crab Fishery Management Plan for review by the Secretary of Commerce.

Our basic objection to the FMP is the limited area (Bering Sea and the Aleutian Islands) covered by the plan. It is our contention that the plan should cover all the waters outside the territorial limits of the State of Alaska. Then, if certain areas under federal jurisdiction are not in need of federal management in waters outside of State jurisdiction, these waters can be excluded as a part of regulations adopted under the plan based upon an adequate showing that federal management and jurisdiction is unnecessary. It is our belief that the plan as now written surrenders federal jurisdiction to the State. It leaves a vacuum in enforcement of king crab regulations in that the State has no control over a fishing vessel operating outside of the territorial waters of Alaska when such a vessel does not enter the State's waters either before or after conducting fishing operations on the customary crab grounds.

We have no objection to the framework nature of the plan. In fact, we strongly favor this aspect of the plan so as to allow for local implementation of the plan by the Regional Director of the National Marine Fisheries Service in conjunction with the Alaska Commissioner of Fish and Game and the Board of

Fisheries but within limits agreed to in advance by the Secretary of Commerce. This will allow for fast action when it is required by unpredictable changes in the condition of the king crab resource.

Neither do we have any objections to designating the State of Alaska as the managing agency of the king crab plan as long as they manage the plan as agreed upon in advance through existing mechanisms of both the federal government and the State. In this way there will be no loopholes in the king crab management and enforcement as there are at present.

In the event there are differences of opinion between the Board of Fisheries and the Council, we are certain that these can be reconciled by appropriate officials of the State and the Federal government.

3. The SSC understands that the proposed amendments which are provided in letters from Mr. Hastings (undated), Mr. Baker (dated September 4, 1981) and Mr. McGregor (dated September 3, 1981) are also to be included in the amendment package. The SSC takes no position on these proposed amendments. We would like to point out that to our knowledge a position on most of these proposed amendments has not been taken by the team. The SSC is concerned about sending out proposed amendments for public review without some internal review for at least reasonableness.
4. The SSC did not take any position with regard to any other proposed amendments.

The SSC believes that the Council must develop a step by step procedure similar to that developed for programmatic research funds for amendment packages. Sufficient time must be provided to allow the Council staff to develop an amendment package and then for the Council's AP and SSC to review each of the proposed parts.

E-6 Bering Sea/Aleutian Islands Groundfish FMP

The SSC reviewed the September 3, 1981 draft of Amendment #3 to the Bering Sea/Aleutian Islands Groundfish FMP. The SSC had extensive discussion with interested parties regarding interpretation of certain sections of the proposed amendment. These discussions dealt primarily with the salmon sections of the amendment. In order to help clarify the issues raised, the SSC recommends the following modifications be made:

1. That Table 1 be modified to separate the chinook from the total salmon PSC. A proposed modified table is provided in Attachment 2. This modification is recommended to ensure adherence to the Western Alaska/Japanese Trawling Agreement. This modified table includes new footnotes. Footnote 1 specifies the percentage used in determining the number of total salmon from the agreed upon chinook levels. The Council should note that the SSC is recommending changing the percentage from 93% to 92%. The 93% was based upon the 1979 catch composition. The 92% is based upon the average of four years catch composition. The SSC feels this is more appropriate. This value will also need to be corrected on page 6 of the proposed amendment. Footnote 2 clarified how the salmon PSC will be applied. It should be noted that as the amendment is now written the total salmon PSC cannot be exceeded but the chinook PSC has a built-in 10% roll over.

In preparation of the SSC minutes, a subcommittee of the SSC has found that the roll over is not workable under a binding total PSC for Total Salmon. The Council may wish to extend the roll over to all salmon to make the proposed amendment workable.

2. That Table 1 be modified to include the 1986 PSC for chinook and total salmon. It should be noted that a third footnote has been added to the table with regard to this addition. This recommended addition is to maintain consistency between the amendment and the agreement.

3. That a footnote be added to page 7 to the statement: "2. Changes in stock condition and abundance of target groundfish species." This footnote should read: "In the annual reviews, this factor will not be applied to salmon. However, it will be included in the three-year review which is referenced to in the footnote number 3 to Table 1 on page 5." This addition will again maintain consistency between the amendment and the agreement.
4. That on page 9, that the last sentence before Section F be modified to read: "Groundfish catches during the research, where the catch is retained for commercial purposes will continue to be counted towards the nation's allocations." This is to bring this gear research procedure in line with current practice for approval of research by the NMFS and the intent of the sentence before our modification.

Additionally, it should be noted that it is the intent of the agreement between the principal parties that the roll over procedure start with the 1981 season. The Council should ensure that the procedure does start with the 1981 season, regardless of when the amendment is approved.

Subject to the above, the SSC recommends that the proposed amendment be approved by the Council.

The SSC also notes that the amendment calls for clarification from the Council on the issue of a PSC policy for the domestic fishery. This current amendment package does not include a procedure for the domestic fishery.

The SSC recalls that in its report to the Council at the Homer meeting (July 21-22, 1981) the point was made that the purpose of the PSC concept is to control mortality. From this perspective, all predators have to be considered. Consequently, since the Council had instructed the PDT that Amendment #3 would not apply to the domestic fleet, the SSC recommended that different regimes be developed for the foreign and domestic fleets. However, in order for the PMT to develop the latter, the Council must specify both management objectives for the domestic fleet and PSC levels that would apply.

F-1 Contracts and RFP's

Contract 80-3

The SSC reviewed the draft final report for Contract 80-3: "Seasonal Use and Feeding Habits of Walruses in the Proposed Bristol Bay Clam Fishery Area." The context of the report was compared to the contract work tasks and found to be complete. The SSC finds the report to be well written, and very complete and recommend that the Council accept this report as fulfillment of the contract.

RFP 81-2

The SSC reviewed the action by the Finance Committee at the July Council meeting. The Finance Committee had recommended that this contract be held in abeyance until alternative methodologies for determining stock origins could be explored. No specific proposals were presented to the SSC. It is our understanding that other methods investigated were excessively expensive.