

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Jim H. Branson
Executive Director



DATE: March 11, 1986

SUBJECT: King and Tanner Crab FMPs

ACTION REQUIRED

- (a) Consider future of Tanner Crab FMP.
- (b) Review status of King Crab FMP and delegation of authority to the State (information only).
- (c) Review proposals.
- (d) Review summary of Seattle crab hearing.
- (e) Review Board action on regulatory proposals and take any action necessary on proposals.

BACKGROUND

Thursday at 3:00 p.m. we will hold a teleconference with the Board of Fisheries regarding crab issues of mutual concern (see Special Board/Council Teleconference Agenda).

D-2(a) Consider future of the Tanner Crab FMP.

On February 14, 1986 I sent you a copy of a memo from Pat Travers, NOAA General Counsel, recommending that we consider suspending, or possibly withdrawing, the Tanner Crab FMP because of the continuing problems of managing these fisheries. The Council and NMFS have attempted to follow the State of Alaska's lead when implementing fishery regulations for Tanner crab, but while our joint management approach has worked well with salmon and king crab, it's becoming increasingly difficult with Tanner crab. A declining resource and increasingly short fishing seasons, the plan's inadequacies, and NMFS' inability to respond quickly to season closures in particular, has made coordinating regulations a serious problem. We need to discuss the various options to resolve the problem with Pat Travers and the Board of Fisheries. A letter from NMFS with their recommendations should be available at the Council meeting.

D-2(b) Status of the BSAI King Crab FMP.

The Bering Sea/Aleutian Islands King Crab FMP was approved with final implementing regulations on December 2, 1984. However, no fishery regulations have been approved and the Governor has not yet accepted the delegation of management authority. The Board of Fisheries has been reviewing the issues surrounding acceptance of the federal delegation of authority over the past few months, including budgetary constraints and the need for revision of state regulations to make them consistent with the FMP and National Standards. We have not heard officially whether or not the Board will recommend acceptance.

D-2(c) Review shellfish proposals.

Council and NMFS staff have reviewed and summarized all king and Tanner crab management proposals submitted to the Board for the 1986-87 season [Agenda Item D-2(c)1]. Several proposals if adopted by the Board would require FMP amendments to bring federal regulations into conformity with those of the state.

D-2(d) Seattle Crab Hearing.

The Council and Board held their annual Washington king crab hearing in Seattle on March 1. A summary of the testimony and discussion is included as Agenda Item D-2(d)2.

D-2(e) Review Board actions and approve regulatory changes.

The staff will summarize Board actions on king and Tanner crab proposals. We need to review all Tanner crab changes which would require Council action. Proposals for king crab which would require FMP amendment are the only ones that require Council action. You need to identify the proposals you want prepared as plan amendments for public review. The amendment package with accompanying supporting documents will be ready for your review at the June meeting.

MARCH 1986

SUPPLEMENTAL

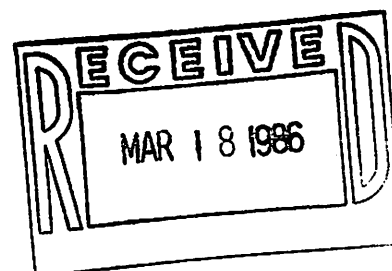
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration*National Marine Fisheries Service*

P.O. Box 1668

Juneau, Alaska 99802



March 17, 1986



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

Dear Jim:

We would like to convey to the Council the NMFS recommendation regarding the future of the Tanner crab fishery management plan (FMP). Pat Travers, in his January 31, 1986, memorandum to Jim Brennan, et al, accurately describes many deficiencies of the Tanner crab FMP. These deficiencies have led Pat to conclude that the plan should be immediately suspended and permanently revoked. We agree with most of Pat's description of the FMP's deficiencies, but we do not agree with the recommended solution. We believe that the FMP should be amended to produce a sound basis for managing the Tanner crab fishery.

The two main alternatives for amending the FMP appear to be (1) amending the current FMP to better reflect practices necessary to manage the Tanner crab fishery or (2) adopting a delegation of authority to the state similar to the King Crab FMP.

We believe that it may be premature to embark upon another "delegation-type" FMP until we have the king crab delegation FMP fully functional. Because this type of FMP is unique, we should have a successful prototype before we develop a second one. Thus, if the Council decides that federal management is still appropriate for the Tanner crab fishery, we favor alternative 1, to amend the current FMP.

Three principal issues need to be addressed if the Council chooses to amend the FMP. First, optimum yields need to be revised to reflect current stock levels. Second, field order authority must be revised to reflect the conditions and information that can reasonably be expected to trigger openings and closings of seasons in all or part of the various regulatory areas. Third, the FMP should reflect appropriate policies and methodologies to be used to manage the various Tanner crab fisheries. For example, the current FMP makes no mention that harvest guidelines are generated annually for each regulatory area, and are often used as the basis for closing the Tanner crab seasons. The FMP should describe the basis upon which guideline harvest levels are established and how they are to be used to manage the fishery. The most important objective in amending the FMP should be to provide workable management measures which can be used to open and close Tanner crab seasons in coordination with the State's program. We suggest the Council consider two alternatives:



1. a. Following the March Council meeting, assemble a team of agency and Council staff to rapidly and comprehensively rewrite the entire FMP (this has been called the "Swat Team" approach).
- b. The Council would consider the resulting amendment package and if appropriate adopt it for public review at the June meeting;
- c. The Council would develop the final management package for adoption at the September meeting;
2. The same schedule as alternative 1 except that the Council would amend only the most critical areas needing attention. The less critical parts of the FMP could then be reworked over a longer period, possibly for a 1987 amendment cycle.

While it would be ideal if the revised plan could be completed and approved by November 1, past experience suggests that it is unlikely that we will be able to meet this ambitious schedule. Therefore, under either Alternative 1 or Alternative 2, the Council should allow for the possibility that the new management plan will not be in place by the start of the next crab season. Consequently, at the March or June meeting, the Council should consider recommending to the Secretary that the existing plan be revoked effective upon the start of the next fishing season. This would allow the state to manage the crab fishery if the amended plan is not put in place on schedule. Should any problems develop during the period before the FMP is implemented, the Council could request the Secretary to promulgate remedial emergency regulations.

We suggest that the Council adopt one of these two alternatives for addressing the problems with the Tanner crab FMP. We will commit a Regional staff management member full time to assist in preparation of the amendment package.

Sincerely,


Robert W. McVey
Director, Alaska Region

1986 CRAB PROPOSALS SUMMARY OF MUTUAL BOARD/COUNCIL CONCERN

Proposal #

Proposal

Tanner crab

Cook Inlet

Seasons

- 9 Southern district season noon January 15-April 30.
- 10 Southern district season noon January 15-April 30.
Central, Kamishak Bay, Barren Islands, Outer, and
Eastern districts season noon January 15-May 31.
- 11 Southern district season noon January 15-April 30.
Central, Kamishak Bay, Barren Islands, Outer, and
Eastern districts season noon January 15-April 30.

Gear

- 12 Require 2 escape rings of 4 3/4 inch minimum inside
diameter in each Tanner crab pot.
- 13 Require escape rings in Tanner crab pots.
- 14 Pot limit of 75 (king and) Tanner crab pots in the
aggregate per registered vessels in all waters east of a
line from Point. Adams to Anchor Point.
- 15 Redefine Tanner crab pot to include Dungeness gear.

Registration

- 16 Establish a superexclusive registration area east of a
line from Point Adams to Anchor Point.
- 17 Make the Southern District of Area H a superexclusive
registration area.
- 18 Make Kachemak Bay a superexclusive registration area and
require registration 90 days in advance.
- 19 Require registration of all vessels and gear for a
registration area prior to fishing, except that in Areas
E and H registration must be 90 days prior to fishing.

Inspection points

- 20 Add Kodiak as an initial inspection point.

Miscellaneous

24 Ban fishing with deck lights.

Closed area

29 Close the area of Behm Canal between a line from Brow Point to Bluff Point and a line from Point Alava to Sykes Point.

Southeast

Seasons

56 Season November 1-May 1.

57 Repeal the harvest ranges and establish the maximum harvest for Southeast at 2,000,000 pounds and 1,000,000 pounds for Yakutat. (ADF&G)

58 Raise the Southeast guideline harvest level to 1,000,000 to 3,500,000 pounds.

Gear

59 Eliminate ring nets as lawful gear.

60 Require at least two escape rings with a minimum inside diameter of 4 3/4 inches, within 12 inches of the bottom of the vertical plane of the pot.

Area

77 Split the Yakutat and Southeast portions of Area A, southeast Alaska into two registration areas. (ADF&G)

Kodiak

98 Manage the Kodiak district of Area J as a single unit; the season would be noon January 15 - noon March 1.

Westward

District description

107 Delete paragraphs 1-6 in subsection (a), paragraph (1) - (3) in subsection (b), paragraphs (1) and (2) in subsection (c), and paragraphs (1) and (2) in subsection (e) of 5 AAC 34.405. (ADF&G)

Registration

108 Make the South Peninsula district a superexclusive area.

Gear

- 109 Require that pots may not be stored in the Northern subdistrict of the Bering Sea. (ADF&G)

Statewide

Registration

- 121 Delete the requirement that Tanner crab gear must be registered for an area.

Permits

- 122 Require Tanner crab processing vessels to obtain a permit 10 days before beginning operation.

Gear

- 123 Specify legal Tanner crab fishing gear. (ADF&G)

Miscellaneous

- 128 Require observers on all catcher/processors.
- 129 Establish a management framework to set fishery thresholds (i.e., population levels below which no fishing would be allowed). (ADF&G)

King Crab

Westward

- 105 Allow vessels fishing in Area T (Bristol Bay) and Area Q (Bering Sea) to place unbaited pots on the fishing grounds for up to 5 days prior to the opening day. Require tank inspection 24 hours before the start of the season.
- 106 In Area Q, Norton Sound subsection, an inshore small boat commercial fishery will be apportioned 25% of the quota for that subsection. Vessel size and number of pots will be limited. The season will be noon June 15 - noon July 20.

Statewide

- 115 Prohibit all king crab fishing for 3-5 years
- 116 Require processing vessels operators to obtain a permit 10 days prior to beginning operation.

- 117 Revise guidelines for preseason closures and when fisheries should be allowed following a year or more of complete closure. (ADF&G)
- 118 Revise the Board's policy on king crab management. Revisions may address the inability of managers to reasonably provide harvest stability, the concept of managing for a spawner population that provides maximum recruitment, and the establishment of population thresholds below which fisheries would be curtailed. (ADF&G)
- 119 Define legal king crab gear more precisely. (ADF&G)
- 120 Revise the method of determining harvest levels for red and blue king crab in areas K, M, O, R, T, and Q. The following language was proposed by ADF&G:
5 AAC 34.080. HARVEST STRATEGY.
(a) Unless otherwise specified in this chapter, the harvest levels for red and blue king crab in statistical areas K, M, O, R, T, and Q will be based on annual population survey estimates as follows:
- (1) In the case of depressed populations, the fishery will not be opened if the population is below a threshold value which protects sufficient reproductive capacity for stock recovery, and provided the fishery threshold populations will be selected based upon the size structure and estimated reproductive capacity of the stock but will not exceed 35 percent of the legal population.
- (2) In the case of average and peak populations, the exploitation rate will be selected based on prerecruit and postrecruit relative abundance levels as indicated in the following table:

Population Size	Prerecruit Abundance	a/ c/	Approximate exploitation rates of legal crab at given levels of postrecruits a/		
			Low b/	Moderate b/	High b/
Average	Declining		40	40	40
	Stable		40	45	45
	Increasing		40	50	50
Peak	Declining		40	45	50
	Stable		50	55	60
	Increasing		60	60	60

a/ Prerecruits = crab that will reach legal size in one or two molts (1-2 years). Postrecruits = crab of legal size for one or more years.

b/ Low = less than 1/3, moderate = 1/3 - 2/3, and high = greater than 2/3 of the population.

c/ When the recent 5-year trend is indicated by a negative, flat, or positive slope, prerecruit abundance is defined as declining, stable or increasing, respectively.

(b) If in any given year a registration area is not surveyed, the department may, as required under (a) of this section, set exploitation rates based on the most recent survey and/or fishery performance data.

Miscellaneous

- 128 Require observers on all catcher/processors.
- 129 Establish a management framework to set fishery thresholds (i.e., population levels below which no fishing would be allowed). (ADF&G)

COUNCIL ACTION REQUIRED FOR CONSISTENCY IF BOARD ADOPTS 1986 PROPOSALS

Tanner Crab 1986 Board Proposals

PROPOSAL	NUMBER	ACTION REQUIRED		
		NOTICE	AMENDMENT	NO ACTION

Cook Inlet				
Season - change dates	9, 10, 11	X		
Gear - require escape rings	12, 13		X	
Pot limits - 75 east from Point Adams to Anchor Point	14		X	
Gear - revise discription to include dungeness gear	15		X	
Registration - establish super-exclusive parts, or require registration prior to opening	16, 17, 18, 19		X	
Inspection - add Kodiak as new inspection point	20			X
Restrict fishing with deck lights	24		X	
Closed area - to commercial fishing	29		X	
Southeast				
Season - change dates	56	X		
Guideline harvest - change for Southeast and Yakutat	57			X
Guideline harvest - change for Southeast	58		X	

PROPOSAL	NUMBER	ACTION REQUIRED		
		NOTICE	AMENDMENT	NO ACTION

Gear - eliminate ring nets as lawful gear	59		X	
Gear - require escape rings	60		<u>X</u>	
Registration area - create new area	77		X	
Kodiak				
Time area restrictions - for pot gear	83, 92		X	
Manage - district wide	98			X
Guideline harvest - district wide	98			X
Season - change dates	98	X		
South Peninsula				
Registration - designate exclusive	108		X	
Bering Sea				
Gear - forbid storage of pots in Northern Subdistrict	109		<u>X</u>	
Statewide <i>no BOF action yet</i>				
Registration - delete requirement that gear must be registered for an area	121			X
Permits - require processing vessels to obtain permit before starting	122		X	

DRAFT AGENDA

Special Board/Council Teleconference
3:00 PM, Thursday, March 20, 1986

I. Tanner Crab Management

ADF&G position and Board recommendation on revising or withdrawing Council's FMP.

II. King Crab Management

a. State position on accepting delegation of authority and schedule for doing so.

b. State position on making Seattle king crab hearing discretionary.

III. Shellfish Regulations

a. Review of Proposals

b. Board actions

c. Council follow-up action

IV. Groundfish Trawl Closures

Review of Council actions in Gulf of Alaska and Bering Sea and Aleutians.

Observers - require aboard catcher processors	128	X
Thresholds - establish framework for setting	129	X

KING CRAB 1986 Board Proposals

PROPOSAL	NUMBER	ACTION REQUIRED		
		NOTICE	AMENDMENT	NO ACTION

Areas T and Q				
Gear - allow unbaited pots on fishing grounds 5 days before season	105			X
Quota - establish small boat inshore fishery using part of Norton Sound quota	106		X	
Statewide - <i>not BOP act yet</i>				
Harvest - Prohibit for 3 to 5 years	115		X	
Permits - require proc- essing vessels to obtain permit before starting	116			X
Preseason closures - and determing when to reopen	117		X	
Management strategy - revise	118, 129			X
Harvest strategy - revise	120		X	
Observers - require aboard catcher processors	128		X	

SUMMARY
Council/Board of Fisheries Joint Public Hearing
on the
Proposed King Crab Regulations for the 1986-87 Fishery

Seattle, Washington
March 1, 1986

In accordance with the Bering Sea/Aleutian Islands King Crab Fishery Management Plan (KCFMP), the North Pacific Fishery Management Council and the Alaska Board of Fisheries conducted their fifth joint public hearing on shellfish management outside Alaska on Saturday, March 1, 1986, in Seattle. The hearing was chaired by Rudy Petersen, with Council members John Peterson, John Winther and Mark Pedersen representing Council member Wilkerson, and Board member John Garner in attendance. Support staff present were Jim Branson and Steve Davis, NPFMC; Beth Stewart, ABOF; and Ron Berg and Jerry Reeves, NMFS. The hearing convened at 9:00 a.m. with an overview of the agenda and a status report on the king crab and Tanner crab FMPs by Jim Branson and Steve Davis. Approximately 20 members of the public attended the hearing and a synopsis of individual testimony is given below.

Thorn Smith, North Pacific Fishing Vessel Owners' Assn, Seattle, supports the mandatory public hearing requirement in the KCFMP and would like to see the plan implemented as soon as possible. His association believes that the hearing provides Washington-based fishermen with important access to the Board's regulatory process. Recognizing the declining operating budgets of the council and Board, Mr. Smith suggested that alternatives to a hearing, such as a teleconference, or hearings in conjunction with other meetings be pursued as ways to cut down costs.

The NPFVOA supports public proposal #105 which would authorize the deployment of unbaited crab pots five days prior the season opening date, primarily for safety reasons. Mr. Smith mentioned that this regulation would not present an enforcement problem since tank inspections would prevent fishermen from any illegal fishing prior to the season.

With regard to the Tanner Crab FMP (TCFMP) and its problems, the NPFVOA does not want the plan revoked or regulations suspended. They believe that a federal plan is necessary for this fishery and that the current plan should be used until a framework amendment is developed.

Arni Thomson, Coalition of Concerned Crab Fishermen, Seattle, presented several new proposals to the Board and Council. Beth Stewart mentioned that the deadline for submission of proposals was January 22, 1986, but noted that

the Board's legal notice and shellfish meeting agenda would allow for consideration of Mr. Thomson's proposals, which were:

1. To close that area of the Alaska Peninsula out to 12 miles to hard on-bottom trawling year-round, from 165°W longitude, northeast along the Peninsula to 58°N latitude to protect king crab, Tanner crab and halibut nursery areas and to minimize bycatch of these species.
2. To close an area of the Bering Sea district east of 164°W longitude and south of 158°N latitude from February 15 to June 15 to all on-bottom trawling to protect king and Tanner crab during their reproductive and soft-shell periods.
3. To restore the boundaries of the Bering Sea Pot Sanctuary closing both foreign and domestic trawling in this area. Mr. Thomson stated that the DEIS for Amendment 1 to the BSAI Groundfish FMP supported bait trawling in the Sanctuary as the only trawl fishery in the area. He suggested that the development of the groundfish fishery and the impact on the crab resource is contrary to the DEIS analysis.

Details of these proposals were handed out at the hearing and copies will be made available to Council and Board members on request.

Morris Hansen, fisherman, Seattle, expressed his concerns over reopening the Bristol Bay Pot Sanctuary to on-bottom trawling and submitted a written statement.

Dennis Petersen, fisherman, Seattle, supports continuation of the Seattle joint public hearing since 60%-70% of the shellfish harvested off Alaska is taken by non-Alaskan fishermen. He suggested that the hearing be held soon after the new year since most Seattle crab fishermen are in town and would be able to attend. He also supported the TCFMP, saying that it gives NMFS the responsibility to manage the fishery. If the plan were withdrawn, the capability of Washington-based fishermen to work with management would be significantly reduced.

Steve Hughes, Highliners Association, Seattle, encouraged the Council to give full consideration the TCFMP problem. He supports the idea of developing a framework TCFMP.

Ron Peterson, fisherman, Seattle, believes that NMFS has been irresponsible in its management of the Tanner crab fishery and recommends that the TCFMP be withdrawn and that management be returned to the State of Alaska.

Tom Casey, fisherman, Seattle, supports extending the no bottom trawling areas north of the Alaska Peninsula to protect immature king crab. He said that a significant number of immature female king crab are found in shallow water west of 162°W longitude and are subject to trawl bycatches.

Kris Paulsen, fisherman, Seattle, supports delegation of king and Tanner crab management to the State of Alaska with federal oversight. Both crab plans should take into account all crab harvests; both directed and incidental. Was not happy about proposed research for trawl/crab interaction this year because it wouldn't show true extent of crab mortality.



North Pacific
Fishing Vessel
Owners' Association

AGENDA C-3D-2a

T. Smith
Test. 3/20
2:24 pm

March 18, 1986

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

Dear Jim:

The NPFVOA, an organization of crab fishermen and trawlers, wishes to express its vehement opposition to the suspension of the Tanner crab FMP and/or its implementing regulations. We support the second alternative proposed by the NMFS Alaska Region in its letter of March 17 - update the plan through immediate amendment of critical portions, followed by a reworking of the less critical parts during the next amendment cycle.

Alaska has a long history of discrimination against non-Alaskans, primarily fishermen from the Puget Sound area, in the regulation of fisheries off Alaska. See, e.g., Haavik v. Alaska Packers' Association, 263 U.S. 510 (1924); Freeman v. Smith, 44 F.2d 703 (9th Cir. 1930); Mullaney v. Anderson, 342 U.S. 415 (1952); Brown v. Anderson, 202 F. Supp. 96 (D. Alaska 1962); Bristol Bay Herring Marketing Cooperative v. Skoog, No. A81-403 (D. Alaska Mar. 27, 1981) (Appendix F). See also Robison v. Francis, No. 311, ___ P.2d ___ (Alaska Jan. 17, 1986) (Appendix G). In enacting the Magnuson Act, Congress was particularly concerned about such discrimination based on state of residency. Not content to rely on the equal protection component of the Due Process Clause, it specifically addressed the problem of discrimination on the basis of state of residence in National Standard No. 4, which reads in part:

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

In order to avail themselves of this much-needed protection, Tanner crab fishermen from outside the State of Alaska need an FMP implemented by federally-approved regulations. At a minimum, they need the sort of federal oversight provided by the soon-to-be-implemented king crab FMP. Recently the North Pacific Fishing Vessel Owners' Association was obliged to take legal action against the State of Alaska to overturn Tanner crab pot limits and exclusive registration zones which disadvantaged large out-of-state vessels. Success in this case hinged on federal policy expressed in the development of an amendment to the Tanner crab FMP.


A joint statement of principles for management of the fishery will not afford the needed protection. What is required is a full legal review of proposed State management measures to assure their consistency with the FMP, the National Standards and other provisions of the Magnuson Act, and with other applicable law. We regard protection of fishermen from discrimination on the basis of their state of residence as a fundamental duty of the federal fisheries establishment.

Mr. James O. Campbell
March 18, 1986
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Likewise, little comfort may be found in the Magnuson Act provision for emergency action in fisheries not regulated under an FMP. Continual monitoring of state regulatory activities in the EEZ is a substantial undertaking, best borne by the federal bureaucracy designed for the purpose. Emergency actions require substantial documentation, and can easily require four weeks or more for implementation. Emergency authority may be invoked only once to address a specific problem, and wronged fishermen would be obliged to bring a lawsuit to defend their prerogatives should the State repeat a particular discriminatory action. Finally, there is no guarantee that fishermen could convince the Council or the Secretary of State to take emergency action on their behalf.

Some people view the suspension of the regulations implementing the Tanner crab FMP as the first step towards the abandonment of federal management of the fishery. We oppose any such action, and respectfully request that the Council insist on prompt amendment of critical portions of the FMP and implementing regulations.

Sincerely,



Thorn Smith
Executive Director