

BOARD ACTION - KING CRAB

I. Areas and Boundaries

- A. The western boundary of the Dutch Harbor Area was shifted from 172°W. longitude to 171°W.
- B. The northern boundary of the Adak Area was shifted northward to include Bowers Ridge.
- C. The Bering Sea Area definition was modified to reflect the Adak Area change.
- D. A new subsection called St. Lawrence was established west of Norton Sound.

II. Season

- A. Sex, size, season (3-S) management was rejected. Staff was directed to increase the exploitation rate in the St. Matthew section if the 1984 preseason king crab survey indicates a high abundance of post-recruit crabs.
- B. The following seasons were established (\* denotes change)

Norton Sound	Aug 1 - Sept 3
*St. Matthew	Sept 1 - Sept 22
*St. Lawrence	Aug 1 - Sept 3
Pribilofs	Oct 1 - Apr 15
Bristol Bay	Oct 1 - E.O.
Dutch Harbor	Nov 10 - E.O.
Adak	Nov 10 - Feb 15

III. Size Limits

- A. The brown king crab size limit was changed to 6" in Dutch Harbor and 5½" in Bristol Bay.

IV. Harvest Strategies

No change.

V. Closed Waters

- B. The closed area around St. Lawrence, King and Diomed Islands was increased from 3 miles to 10 miles.

## VII. Landing, Inspection and Reporting Requirements

- A. The 116-hour bait up period was eliminated in Bristol Bay, Dutch Harbor, and Pribilofs, and replaced with tank inspections beginning 24 hours before season opening.
- B. No action on bait up in the general section of the Bering Sea area.
- C. The 36-hour contact period for the Pribilof District was reduced to 24 hours.

## VIII. Pot Storage

The Board re-established the old Federal Pot Storage area and eliminated the other Bristol Bay storage area.

## IX. Miscellaneous

- A. Vessels aiding distressed vessels will not be allowed to make up lost fishing time.
- B. Bottom trawl. The Board approved a data collection/observer/registration program to identify sensitive areas and monitor the impacts of trawling in those areas. The Council concurred in principle with the action and included this as an item on the May agenda (Rudy Petersen objected).

## STATEWIDE

- I. The proposal to allow a bait up period was rejected.
- II. The Board agreed to allow ADF&G to allow vessels to register for any or all species of king crab within a single registration area. Thus, for example, a vessel could register for only brown king crab and during the red crab season the owner could subsistence fish for red crab. This would not free the vessel from any exclusive registration regulations between areas, however.
- III. The Board stated that the department has no legal authority to establish separate permits for each species of king crab.
- IV. The proposal to allow 7 days for gear removal for a partial area closure was rejected.
- V. Pots may now be allowed to remain on the grounds after the season in cases of weather or vessel breakdown.

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Jim H. Branson  
Executive Director

DATE: May 17, 1984

SUBJECT: Bering Sea/Aleutian Islands King Crab Fishery Management Plan

**ACTION REQUIRED:**

- (a) Review Board of Fisheries regulatory actions concerning the 1984 Bering Sea/Aleutian Islands king crab fishery.
- (b) Review status of FMP.
- (c) Review permit requirement and approve course of action.

**BACKGROUND**

**A. Board of Fisheries Regulatory Actions**

In October 1981, the North Pacific Fishery Management Council and the Alaska Board of Fisheries formally adopted the Joint Statement of Principles on the management of domestic king crab fisheries in the Bering Sea/Aleutian Islands area. Under the terms of that document the Board provides the Council a written statement explaining the basis for any change in regulation. That report is included in your notebooks as Agenda item D-2(a). A summary table of all the Board's BS/AI king crab actions was mailed to you in early April.

**B. Status of the FMP**

In September, 1983, the Council voted to submit the BS/AI King Crab FMP and all supporting documents for fast-track Secretarial review. Included in that action was a reaffirmation of the federal permit requirement specified in the FMP, but with that provision reserved in the implementing regulations on the advice of NOAA Counsel.

The Council, recognizing that a federal permit as opposed to a "no permit" situation would provide information on number of vessels fishing king crab in federal waters and would allow permit sanctions as possible punitive action against vessels that violate fishing regulations, chose to have in the FMP a federal permit section which reads:

All U.S. fishing vessels operating in the FCZ must have on board a current federal permit issued annually by the Secretary of Commerce. The authority to fish in the FCZ of any vessel used in committing a serious violation of management measures adopted under this plan, as well as such authority of any other vessel owned or operated by the same person, may be suspended or revoked permanently.

The Council decision to reserve this requirement in the implementing regulations was based primarily on the legal questions surrounding the state permit system, its applicability in the FCZ, and the differential fee structure. We had also heard that the state was considering other alternatives to a fishing permit. In fact, there is now a provision for landing permits in legislation now pending before the State House and Senate.

Following submission of the King Crab FMP package for Secretarial review, the Central Office informed us that the package was not considered structurally complete and they could not begin review until additional material had been provided. We learned of this in a memo to the Region from the Central Office in November 1983. The Region submitted the requested material that same month, but we were then told by NMFS that the permit requirement could not be "reserved" in the regulation if the portion of the plan requiring permits was to be approved. In response to that information, the Regional Director and the Commissioner of ADF&G met in December 1983 to discuss state and federal permit requirements and develop a solution to the Central Office's concern. During that meeting, the state was informed that the current state fishing permit could not be approved under the FMP for fishing king crab in federal waters. A memo summarizing this determination was sent to us by NOAA General Counsel in March 1984 and is included as item D-2(b).

This month we learned from NOAA General Counsel that the permit problem is not the cause of the delay in beginning Secretarial review, but that two elements of the package have still not been provided [see memo from Jensen to Smith, item D-2(c)]. The Region is currently responding to this request.

We had expected that under the fast-track review schedule outlined in the Magnuson Act, Secretarial review would begin last November. It is clear that there has been a lack of communication between NMFS and the Council concerning king crab and it hasn't been until our recent inquiry that we have learned the status of the plan.

### C. Permit Requirements

While apparently the Council does not need to take any formal action to get the FMP moving through the review process, the permit problem remains unsolved. The following discussion outlines the problem as we see it, and the consequences of both Council action and inaction on this issue.

When we began drafting the FMP, we envisioned "federalizing" all state regulations, including the permit system. We later learned that if we have an FMP the current state king crab permit cannot be required for fishing in the FCZ whether there is a federal permit or not because of the significant difference between state resident and non-resident permit fees. The problem identified by the Central Office is that the FMP states that any vessel fishing for king crab must have on board a federal permit, but the regulations do not include a permit provision. The Council was advised to reserve this section of the regulations until this could be resolved with the state. However we now understand that the Central Office views the discrepancy between the FMP and the regulations as a conflict which must be resolved either before or during the implementation process. It may be better to resolve the problem here rather than have it resolved in Washington. If the Council does not act on

the permit regulation or the permit provision in the FMP, the decision will be made by the Secretary, based primarily on comments received after the notice of proposed rulemaking and prior to the Council's next meeting. Action or recommendations by the Council at this meeting should influence that decision.

#### OPTIONS

Since the state fishing permit system as now structured is not acceptable in the FCZ regardless of what the Council does, will a federal permit serve a useful purpose? The advantages of a permit regulation include the following:

1. A federal permit could be used as an accounting tool and an enforcement tool, especially with respect to vessels that are not registered with the State of Alaska.
2. A permit regulation would resolve the present conflict between the FMP and its implementing regulations.
3. The FMP would remain intact as submitted and there would be no reason for partial disapproval by the SOC.

If you believe a federal permit is desirable there are two ways to establish it:

1. Approve a specific regulation and supporting documents. ~~A disadvantage is that additional public review of the documents may be required prior to the Council decision.~~ The advantages are the same as those already listed.
2. Send a letter to the SOC asking him to use his authority to revise the implementing regulations by drafting the necessary reporting requirement. The advantages are the same as those above and in addition the Council would not have to provide further supporting documentation. We can't be sure of course that the Secretary would abide by the Council's request.

It's probable that if no permit provision is approved at this time, and that part of the FMP is disapproved, there is a very slim chance that a permit provision will ever be approved. If the Council feels that a federal permit should not be required, there are two possible courses:

1. Take no action and leave it to the SOC. (Indications are that the FMP would be partially disapproved); or
2. Vote to have no permit provision. A major consideration here is that a central part of the discussion of the need for an FMP in the RIR and other documents is that the state would be unable to control any "rogue" vessel which is not registered under the laws of the State of Alaska.

If the Council feels they wish to keep the section reserved until some future time, they must either ask the Secretary not to begin the review or else modify the permit section of the FMP. Either course of action would delay the review and implementation of the entire plan indefinitely.



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service  
P.O. Box 1668  
Juneau, Alaska 99802*

ADDENDUM TO KING CRAB RIR/IRFA

Date : May 18, 1984

Reply to Attn. of:

To : File: 900-06  
THRU: Thorn Smith

From : Ron Berg *RB*

Subject: Enforcement Costs Related to the FMP for King Crab

Based on August 1982 communications between our Enforcement Division and the U.S. Coast Guard, annual costs to enforce federalized State of Alaska regulations would be about \$123,400. This estimate is derived from 80 hours of Coast Guard C-130 flight hours at \$1,500/hour, or \$120,000, and 200 NMFS man-hours at \$17/hour, or \$3,400.



ADDENDUM TO KING CRAB RIR/IRFA

May 15, 1984

F/AKR11 - Thorn Smith

F/AKR11 - J. R. Wilson

Are regulations implementing the King Crab Plan "Significant" under P.L. 94-265 (the Regulatory Flexibility Act) and "Major" under E.O. 12291 (Executive Order)?

RFA and E.O. 12291 Conclusions

The expected magnitude of economic impacts of a regulatory action need to be addressed in the RIR for purposes of compliance with the Regulatory Flexibility Act (RFA) and Executive Order 12291 (E.O. 12291). I conclude that these issues have been addressed in the RIR, and that the proposed actions will be "significant" under RFA, but not major under E.O. 12291. The E.O. 12291 defines a major rule as:

1. one in which there is an annual effect of \$100 million or more;
2. one resulting in a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or
3. one in which significant adverse impacts on competition, employment investment, productivity, innovation; or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets (emphasis added).

The RFA addresses the question of how congruent proposed regulations are to the structure and function of businesses, especially small businesses. In this regard, it is important to assess whether a proposed rule has a "significant impact on a substantial number of small entities." Significance is not often addressed as an empirical issue, mainly because the criterion for significance is not well developed or generally agreed upon (see for example, NOAA Guidelines pp. 8 and 9); i.e., it is more of a judgment call than a statistical test. The RFA is not clear on whether a determination of significance is required for both positive and adverse effects. However, NOAA Guidelines suggest that determinations are required when both negative and positive impacts are found.

In relation to E.O. 12291, the proposed FMP will not likely have an annual effect of \$100 million or more. The reason is that much of the FMP acknowledges and/or replaces the present fisheries management system already in place by the State of Alaska, with the only major provision now that crab fishermen who fish in the fishery conservation zone (FCZ) will not be required to purchase a State permit.

Again, for reasons stated in the above paragraph, it is not at all likely that the incremental effect from the status quo (state management) to the proposed measure will bring on any of the effects outlined in (2), except, perhaps in the area of creating revenues to the State.

The repercussion cannot be construed as increasing costs or prices for the State, although it can be construed fundamentally as a



discouragement against discriminatory pricing practices for management services, and an artificial (but non-binding) constraint on the schedule of administrative costs. If one is inclined to view a State agency as one which produces a good, then the problem becomes one in which a monopolist (which happens to be a State agency), discriminates in order to maximize net revenues. Such a condition deviates from pure competition and would have a dead-weight loss to society if all of the antecedent conditions of the problem were to hold. A complicating factor to this view is that, under the FMP, not only would the State be forbidden to discriminate in licensing, but it would also be held to charging only for the administrative costs of issuing the licenses (see Magnuson Act section 304(d), and Travers, 1984). Although this is a valid legal interpretation, it is economically counter-intuitive that the sole product of State management is the issuance of licenses. It is not surprising, then, that the State should try to institute a form of landing fees, should the FMP be put into place. These fees might recoup other administrative costs of providing management services not allowed under section 304(d). It would also allow the State to practice price discrimination if it chose to. Such a landing fee structure has already been described (Travers, 1984). In summary, institution of the FMP does not involve an increase in costs to management; but a primary effect is to artificially constrain the cost structure of State management in the short run by invoking existing law. The secondary effect will be for the State to recoup the lost revenues by another method, thus avoiding the constraint.

The third issue which must be addressed under E.O. 12291 is the question of "significant adverse impacts on competition" (see e.g. Bribitzer, 1983). For the time being, let the constraint of MFCMA 304(d) on the state's costs of supplying management services be binding, as it would be in the short-term. In addition, make the reasonable assumption that the operational management effects of the FMP (outside of licensing, improvements in state/federal coordination of management, and extension of management authority to large catcher/processors which would not normally land catch ashore) are the same. Two questions to be asked would be:

1. What are the likely effects on competition, etc., of partially removing the license fee barrier?
2. What are the likely effects of the changes brought on by the FMP on competition, etc?

Presently, the domestic licensing process in the Bering Sea/Aleutians Islands Area costs \$250; nonresident costs are \$750. Suppose that the licensing fee drops to \$20. Is it reasonable to expect an appreciable change in entry or exit of firms? A theoretical treatment of these costs would classify them as fixed over the season. One would expect new entry to occur only if a discernable difference can be seen in the profit, or rents, paid to productive factors (especially entrepreneurship), since this is what would entice new entrants (thereby bringing about one condition for competition). A downward shift in average total cost would have to be substantial to entice new entrants

into the fishery, because capital and labor would likely enter the fishery in a "lumpy" manner. Even granting the existence of a vessel, crew, and pot retrieving hardware on a vessel, the fixed costs of other factors such as pots would retard entry. In other words, the fixed cost of the license fee would likely play a minor role for new entrants to the fishery, and would play a larger role in determining entry for vessels already operating. Increases in numbers of vessels fishing might come in the form of small local vessels who already fish another (or several) species, and find it convenient, given the new fee structure, to hold an option on a possible future limited entry fishery, and occasionally exercise that option by fishing a few pots.

In addition, a more uniform management system between federal and state and would address the issue of enforcement against factory ships which do not deliver in Alaska. Since this constitutes no real barrier to entry, and since coordination of federal and state management systems is not perceived to be aimed at affecting the entry, then "competition" in the sense of an economy with many sellers is not adversely affected; and neither are the other factors listed in (3).

To summarize, the State appears to be the burdened party as a result of this rule, at least in the short term. In 1981, \$400,000 in revenues were collected for crab fishing in this area, and in 1982, \$334,000 were collected (Gaffney, ADF&G). If, for example, the State were allowed to charge only administrative costs of \$20 per vessel for licensing under the FMP, then, for the 1982-83 season the loss to the State would be approximately \$322,040. Three assumptions were made in this calculation:

- ° The \$20 fee was arbitrary; it reflects the fact that the MFCMA would allow the State to recoup the administrative costs of printing and distributing licenses. In the event that administrative costs of licensing were lower, the losses could be greater. However, they would be no greater than \$334,000 for the 1982-83 season.
  
- ° The total number of vessels which fished in exclusive or super-exclusive areas in 1982-83 was estimated at 598. This estimate is based on the greatest number of vessels which participated in each area. It also assumes that those fishing in non-exclusive areas would have fished in an exclusive registration area, and would therefore be counted in those exclusive and super-exclusive areas.
  
- ° All vessels would choose to fish beyond 3 miles of land, rather than within 3 miles, since more productive fishing areas are further out. If there are fishermen who would have been willing to fish in territorial waters, then the State would be able to retain more of their revenues.

A more precise estimate of the State's loss is not possible, given our time frame, but a more detailed and time-consuming search may reveal more accurate data. It is important to note, however, that the State's House Bill 373, if made law, will provide at least the framework for the institution of landing fees, and may partially obviate concerns raised here.

A second issue that must be addressed is the Regulatory Flexibility Act, and the question of significance in terms of the number of small entities which may be affected. I, too, believe that the FMP as the preferred alternative, requires a determination of significance under the RFA. I think this because the area in question, in the 1983-84 season had at least 144 active vessels; and this was in a dismal season. Just 4 years ago in the 1979-80 fishery, I estimate at least 655 vessels.

The extra 511 vessels which somehow got lost in those 4 years are still out there. Some of them may be expanding into the non-exclusive areas, but many are either idle or trying other fisheries in the interim. However, they will be back if stocks go up. I think costs of compliance with the FMP might decrease substantially, although a landing fee might counter-balance that. The RIR and the preamble to the regulations explain in detail the effects of every framework management activity in the FMP, although the analysis is very long, with many different types and magnitudes of impacts, all will be major in the sense that the whole fleet and processing sector will be affected, either positively or negatively. There are also some distributional issues which the RIR brings up.

My only caution (and this is principally to Mr. Bribitzer), that the impacts of a rule, which is a humanly controlled event (a tool), should not be confused with impacts of adhering to existing legal constraints, or with impacts resulting from information which is collected objectively. For example, an optimum yield is essentially a quota. However, the quota is determined by the health of the crab stock based on

best available information (thereby conforming to a National Standard).  
What cause, then, produces the "impact," the national standard, the  
health of the crab stock which yields the OY determination, or the tools  
used to achieve OY? To do a cogent impact analysis, the term "rule" must  
be liberally interpreted to include the sum of events leading to the  
effect.

JRWILSON:gcs

5-17-84

File: 900-06



Sea and Aleutian Islands area by all persons interested in this fishery, whether or not they are residents of the State of Alaska. This action is intended to provide for the continued active participation of the State of Alaska in the management of king crab fisheries of the Bering Sea and Aleutian Islands area.

DATES: Comments on the FMP and the proposed rule must be received on or before [day 75].

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Copies of the FMP may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, telephone 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907-586-7221.

SUPPLEMENTARY INFORMATION: On \_\_\_\_\_, 1983, the North Pacific Fishery Management Council (Council) adopted the FMP under §302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§1801 et seq. (Magnuson Act). In accordance with Magnuson Act §§303-305, the FMP has been submitted to the Secretary of Commerce (Secretary) for approval and implementation.



Rather than prescribing specific management measures for the fishery it covers, the FMP sets forth general standards and criteria for the management of that fishery. It provides a flexible framework for the development of specific management measures consistent with these standards and criteria, without requiring amendment of the FMP itself to incorporate those measures. The FMP provides management standards and criteria dealing with the following subjects: fishing seasons, gear restrictions, gear placement, gear storage, vessel tank inspection, size and sex restrictions, and registration areas. The FMP also specifies the optimum yield (OY) of the fishery it covers by prescribing a method by which the annual allowable catch from that fishery must be determined, using the best available scientific information.

In adopting the FMP, the Council intended that, to the extent practicable, the State of Alaska should continue to play a leading role in the management of this king crab fishery. Since 1960, shortly after it attained statehood, Alaska has developed a sophisticated management system for the king crab fishery off its shores, both within and beyond the three-mile limit. This system, representing the acquired expertise of scores of State of Alaska employees and an investment by that State over the years of many millions of dollars, could not be duplicated in the immediate future by NOAA. At the same time, some residents of states other than Alaska who participate in the king crab fishery off that State have long been concerned

about their lack of representation on the Alaska Board of Fisheries (Board) and in the Alaska Department of Fish and Game (ADF&G), the agencies that manage fisheries on behalf of Alaska. In order to take maximum advantage of Alaska's ability and willingness to continue to manage the king crab fishery while at the same time providing sufficient Federal oversight to ensure representation and consideration of non-Alaskan concerns, the Council and NOAA have proposed that the FMP be implemented by the Board and ADF&G in consultation with the Council (which includes non-Alaskan representatives) and subject to the approval by NOAA of individual management measures adopted by the Board or ADF&G. The proposed rule delegates management authority for the fishery to the State of Alaska, and specifies the procedures by which existing and future State of Alaska management measures are to be evaluated for consistency with the standards and criteria of the FMP. These procedures are designed to ensure that all interested persons have the opportunity to make their views on State management measures known to NOAA while preventing unnecessary delay in their implementation or amendment. Consultation between the Council and the Board concerning proposals for new management measures will be conducted at joint meetings of those two bodies. Pending approval by the Secretary, new State of Alaska management measures may govern fishing for king crab beyond the three-mile limit in the Bering Sea and Aleutian Islands area only by vessels registered under the

laws of the State of Alaska. After approval by the Secretary, State of Alaska management measures will acquire the force and effect of Federal law, and will apply to all vessels fishing for king crab in the Bering Sea and Aleutian Islands area.

Under the FMP and the proposed rule, each vessel fishing for king crab beyond the three-mile limit in the Bering Sea and Aleutian Islands area would have to obtain a Federal permit from the Secretary.

The FMP covers only the king crab fishery of the Bering Sea and Aleutian Islands area, and excludes the fishery in the Gulf of Alaska. King crab stocks in the Gulf are biologically discrete from those in the Bering Sea and Aleutians, and thus can be managed separately from them. The king crab fishery of the Gulf is, to a much greater extent than the fishery covered in the FMP, relied upon heavily by small local fleets. This fact renders much more difficult an assessment of the socio-economic costs and benefits of proposed management standards and criteria for the Gulf fishery. While an FMP may eventually be adopted for the Gulf fishery, the Council decided that implementation of an FMP for the Bering Sea and Aleutians should not be delayed for the significant period that will be required to assess the costs and benefits of Federal management in the Gulf. NOAA concurs with this decision. In addition, there is substantial controversy

whether any king crab fishery off Alaska would require Federal conservation and management in the absence of the concerns expressed by non-Alaskan participants about the representation of their interests in the State of Alaska management system. The expression of these concerns has been more urgent in connection with the king crab fishery of the Bering Sea and Aleutians than with the Gulf king crab fishery.

#### CLASSIFICATION

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97-453, requires the Secretary to publish regulations proposed by a Council within 30 days of receipt of the FMP and regulations. At this time the Secretary has not determined that the FMP these rules would implement is consistent with the national standards of Magnuson Act §301, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The NOAA Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. None of the economic effects that are summarized below are expected to rise to a level that would make this proposed rule a "major rule" for purposes of the Executive Order. The Council prepared

a regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) which concludes that this proposed rule, if adopted, would have the following significant economic effects on small entities. These effects would derive from the fishery management measures that would be implemented under the proposed rule.

Delayed season opening dates tend to increase meat yield, which will probably cause ex-vessel value of landings to fluctuate. Later opening dates will place the season in bad weather conditions, which will affect smaller vessels more than large vessels. Both small and large vessels could be expected to lose fishing time under such circumstances. Increases in dead-loss would be likely, and the probability of personal injury of the crew and damage to gear would be greater. Season changes would affect processors by changing product recovery rates. Late seasons would also affect transshipment of final product. Consumers might experience moderate price fluctuations, as a result of changes in meat yield.

The proposed carapace size limit is predicted to have wide-ranging effects on statewide price per pound because of a market preference for larger crab. At a carapace width of 6.25 inches, the predicted price per pound would be \$.99. At 7.00 inches, this price is estimated to be \$1.34. Changes in carapace size limits will likely alter available harvestable

surplus. Decreases in allowable harvests resulting from size limits are expected to affect small operators adversely, since the average catch-per-unit-of-effort for such operators tends to be low. Larger vessels would be less subject to this phenomenon. Size limits would affect meat recovery rates and the ease of meat removal, and would thus affect the costs of processors. The magnitude of these potential effects is not known. Size limits could also affect prices to consumers and, in extreme cases of low crab abundance, lead to interruptions in king crab availability on the market.

Yields of crab will change with the exploitation rate, given any particular size limit. At a 6.5 inch size limit, with exploitation rates of .3 and .9, the expected ex-vessel revenues based on 1981 price data would be \$51.5 million and \$76.5 million, respectively. Processors would gain, ceteris paribus, with higher exploitation rates.

The establishment of exclusive registration areas would tend to redistribute the benefits of the fishery between small and large vessels. Exclusive registration favors smaller vessels, while non-exclusive registration favors large, more mobile vessels with high capacity. Processors are expected to be unaffected by the designation of registration areas.

Variations in gear storage regulations would also affect large and small vessels in different ways. The extremes for

such regulations are on-land storage only and random at-sea storage. On-land storage, while adversely affecting all vessels, would tend to affect smaller vessels more than larger ones because of their lack of pot transport capacity. The direct costs of on-land storage would include the rental of space and cost of equipment necessary to handle the gear. The average cost per pot of on-land storage has been estimated at \$18 per pot per year, or \$7,704 per fisherman per year. The other extreme in gear storage regulations is the allowance of random at-sea storage. Because 80 per cent of the crab fleet currently stores its pots on land, a regulation allowing at-sea storage would simply result in another possible productive activity of the land. However, at-sea storage might affect fishery resources and impede navigation and other fisheries.

The FMP leaves open the possibility of a directed fishery on female king crab, which have heretofore been avoided by both fishermen and processors in favor of the larger males. The effects of such a change on small vessels would be significant, because an additional large and distinct biomass of females might tend to relieve some of the competition between small and large vessels. The smaller vessels might be better suited than the larger ones to exploit the females, which would yield a lower catch-per-unit-of-effort and could require considerable sorting. Processors are not likely to be affected adversely by delivery of the smaller female king crab, since they have

had more than a decade of experience in processing Tanner crab, which are similar in size to female king crab.

The Federal permit provided for by the FMP and the proposed rule would be issued to a vessel owner free of charge with no requirement other than the submission of certain information. It would thus have no significant economic effect. The main purposes of the Federal permit requirement are to generate information about the size and characteristics of the fleet for future management purposes; and to make administrative permit revocation or modification available to NOAA as a response to violations of the management measures applicable to the king crab fishery.

This proposed rule is exempt from the procedures of Executive Order 12291 under §8(a)(2) of that Order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the Order.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval.



The Council determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 676

Administrative practice and procedure, Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated:

---

Carmen J. Blondin  
Deputy Assistant Administrator for  
Fisheries Resource Management  
National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR Chapter VI is amended by adding a new Part 676, to read as follows:

PART 676--KING CRAB FISHERY OF THE BERING SEA AND ALEUTIAN  
ISLANDS AREA

Subpart A--General Measures

Sec.

- 676.1 Purpose and scope.
- 676.2 Definitions.
- 676.3 Relation to other laws.
- 676.4 Permits.
- 676.5 General prohibitions.
- 676.6 Facilitation of enforcement.
- 676.7 Penalties.

Subpart B--Management Measures

Sec.

- 676.20 Initial implementation of the FMP.
- 676.21 New State laws and regulations.
- 676.22 Reconsideration of a final rule-related notice by  
the Secretary.
- 676.23 Amendment of the FMP.

AUTHORITY: 16 U.S.C. §§1801 et seq.

## Subpart A--General Measures

### §676.1 Purpose and scope.

(a) Regulations in this part govern fishing for king crab by vessels of the United States within the Bering Sea and Aleutian Islands area.

(b) Subject to the other provisions of this part, the authority to implement the Fishery Management Plan for the King Crab Fishery of the Bering Sea and Aleutian Islands Area (FMP) is delegated to the State of Alaska.

(c) Subject to other requirements of law, this part shall take effect upon receipt by the Secretary of a statement signed by the Governor of the State of Alaska accepting the provisions of this Part on behalf of the State and identifying the agencies that will exercise the authority to implement the FMP delegated by paragraph (b) of this section (designated agency).

### §676.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Authorized officer means--

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bering Sea and Aleutian Islands area means those waters outside the boundaries of the State of Alaska lying south of the Bering Strait and east of the U.S.-U.S.S.R. Convention line of 1867, and extending south of the Aleutian Islands for 200 miles between the Convention line and 167°47'30" W. longitude.

Council means the North Pacific Fishery Management Council.

Designated agency means the agency designated by the Governor of the State of Alaska under §676.1(c) of this part.

Fish includes king crab.

Fishing means--

- (a) The catching, taking, or harvesting of fish;
- (b) The attempted catching, taking, or harvesting of fish;
- (c) Any other activity which reasonably can be expected to result in the catching, taking, or harvesting of fish; or
- (d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing.

Fishery management plan (FMP) means the Fishery Management Plan for the King Crab Fishery of the Bering Sea and Aleutian Islands Area.

King crab means the following species of the family Lithodidae:

- (a) Paralithodes camtschatica, red king crab;
- (b) Paralithodes platypus, blue king crab;
- (c) Lithodes aequispina, brown or golden king crab;
- (d) Lithodes couesi.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. §§1801 et seq.)

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Regional Director means the Director, Alaska Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

Secretary means the Secretary of Commerce.

Vessel of the United States means--

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. §§1400 et seq.) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. §§1400 et seq.) and used exclusively for pleasure.

§676.3 Relation to other laws.

(a) Federal law.

For regulations governing fishing by vessels of the United States for halibut, see regulations of the International Pacific

Halibut Commission at 50 CFR Part 301; for those governing fishing for groundfish off Alaska, see 50 CFR Parts 672 and 675; for those governing salmon fishing off Alaska, see 50 CFR Part 674; for those governing fishing for Tanner crab, see 50 CFR Part 671; and for those governing permits and certificates of inclusion for the taking of marine mammals, see 50 CFR Part 216.

(b) State law.

Each law and regulation of the State of Alaska approved under this part will be incorporated by reference in the FEDERAL REGISTER in accordance with 1 CFR Part 51. Laws of the State of Alaska approved under this part are codified in Title 16 of the Alaska Statutes. Regulations of the State of Alaska approved under this part are codified in Title 5 of the Alaska Administrative Code. Copies of these laws and regulations may be obtained from the Alaska Department of Fish and Game, Commercial Fisheries Division, P.O. Box 3-2000, Juneau, Alaska 99802, telephone 907-465-4210.

§676.4 Permits.

(a) General.

No vessel of the United States may fish for king crab in the Bering Sea and Aleutian Islands area without first obtaining a permit issued under this section. Each such permit will be issued without charge.

(b) Application.

A vessel owner may obtain a permit required under the preceding subsection by submitting to the Regional Director a written application containing the following information:

- (1) The applicant's name, mailing address, and telephone number;
- (2) The name of the vessel;
- (3) The vessel's U.S. Coast Guard documentation number or State registration number;
- (4) The home port of the vessel;
- (5) The length of the vessel;
- (6) The type of fishing gear to be used; and
- (7) The signature of the applicant.

The Regional Director may accept a completed State of Alaska commercial fishing license application in satisfaction of the requirements of this subsection.

(c) Issuance.

(1) Upon receipt of a properly completed application, the Regional Director will issue a permit required by paragraph (a) of this section.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days



following the date of notification, the application will be considered abandoned.

(d) Notification of change.

Any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) Duration.

A permit issued under this section shall authorize the permitted vessel to fish for king crab in the Bering Sea and Aleutian Islands area during a single specified year, and shall continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under 50 CFR Part 621 (Civil Procedures).

(f) Alteration.

No person may alter, erase, or mutilate any permit issued under this section. Any such permit that has been intentionally altered, erased, or mutilated will be invalid.

(g) Transfer.

Permits issued under this section are not transferable or assignable. Each such permit shall be valid only for the vessel for which it is issued. The Regional Director must

be notified of a change in ownership under paragraph (d) of this section.

(h) Inspection.

Any permit issued under this section must be carried aboard the vessel whenever the vessel is fishing for king crab in the Bering Sea and Aleutian Islands area. The permit shall be presented for inspection upon request of any authorized officer.

(i) Sanctions.

Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of permit sanctions against a permit issued under this section. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the Magnuson Act or this part; and such a permit must be revoked if a civil penalty or criminal fine imposed under the Magnuson Act and pertaining to a permitted vessel is not paid.

§676.5 General prohibitions.

It is unlawful for any person to--

(a) Fish for king crab in the Bering Sea and Aleutian Islands area, except as permitted by laws and regulations

of the State of Alaska approved under this part at the time such fishing occurs;

(b) Fish for king crab in the Bering Sea and Aleutian Islands area without, or in violation of, a valid permit issued under this part;

(c) Violate any other provision of the Magnuson Act or this part;

(d) Fail to comply immediately with enforcement and boarding procedures specified in §676.6 of this part;

(e) Possess, have custody or control of, ship, transport, import, export, offer for sale, sell, or purchase any king crab taken or retained in violation of the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part;

(f) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part;

(g) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (f) of this section;

(h) Resist a lawful arrest for any act prohibited by the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part; or

(i) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such person has committed any act prohibited by the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part.

§676.6 Facilitation of enforcement.

(a) General.

The operator of any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel and its gear, equipment, fishing record, and catch for purposes of enforcing the Magnuson Act and this part.

(b) Communications.

(1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the sizes of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signs or placards may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If verbal communications are not practicable, the visual signal "L" meaning "you should stop your vessel instantly," may be transmitted by flashing light directed at the vessel signaled. If the enforcement vessel is equipped with signal flags, the flashing light signal "L" may be accompanied by the code flag "L". The flashing light signal "L" consists of short and long flashes as follows: short-long-short-short (.-..); and the code flag "L" is a square yellow and black flag configured as follows:

[Insert figure.]

(4) Failure of a vessel's operator to stop the vessel when directed by loudhailer, radiotelephone, or flashing light signal or code flag "L" constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is to obtain clarification by loudhailer or radiotelephone should consider the signal to be "L" and stop the vessel instantly.

(c) Boarding.

The operator of a vessel directed to stop must--

(1) Guard Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and boarding party to come aboard;

(3) Provide a safe ladder, if needed, for the authorized officer and boarding party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) Additional signals.

The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these additional signals by the vessel operator is not required. However, knowledge of these additional signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA AA AA etc." (.-.- .-.- .-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.- -.- -.-) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

§676.7 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty, permit sanction, and forfeiture provisions of the Magnuson Act, to 50 CFR Part 620 (Citations), to 15 CFR Part 904 (Civil Procedures), and to other applicable law.

Subpart B--Management Measures

§676.20 Initial implementation of the FMP.

(a) After promulgation of this part, the Secretary will publish in the FEDERAL REGISTER a rule-related notice of approval which (1) specifies the laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect that he finds to be inconsistent with the FMP; (2) declares that the laws and regulations so specified cease to govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; (3) declares that all laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in



effect that are not so specified are approved under this part and govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and (4) states the findings and conclusions upon which the Secretary's action is based. The Secretary will not publish the rule-related notice provided for in this section until interested persons have been afforded a period of at least forty-five days in which to comment on laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect and the consistency of those laws and regulations with the FMP. The statement of findings and conclusions contained in the rule-related notice published under this section must respond to the comments received during this period. The Secretary will not publish the rule-related notice provided for in this section until he has consulted with the Council concerning his action and the findings and conclusions upon which it is based.

(b) The Secretary, after consultation with the Council, may promulgate and amend such other regulations as may be necessary to implement the FMP fully, in accordance with other requirements of law.

§676.21 New State laws and regulations.

(a) New State laws.

(1) Within thirty days after final enactment of a law of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the notice provided for in §676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a rule-related notice requesting comments by any interested person on that law and whether it is consistent with the FMP. Interested persons will have the opportunity to submit comments for a period of at least forty-five days after publication of the notice requesting comments.

(2) Within ninety days after final enactment of a law referred to in paragraph (a)(1) of this section, and after consultation with the Council, the Secretary will publish in the FEDERAL REGISTER a rule-related notice of approval which (1) specifies any provision of that law that he finds to be inconsistent with the FMP; (2) declares that any provision so specified does not govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; (3) declares that all provisions of that law which are not so specified are approved under this part and will govern all fishing for king crab in the Bering Sea and Aleutian Islands

area by any vessel, whether or not it is registered under the laws of the State of Alaska; and (4) states the findings and conclusions upon which the Secretary's action is based, responding to comments received under the rule-related notice provided for in paragraph (a)(1) of this section.

(3) A law referred to in paragraph (a)(1) of this section may govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel registered under the laws of the State of Alaska, until the Secretary publishes the rule-related notice provided for in paragraph (a)(2) of this section. If a law or regulation of the State of Alaska that was previously approved under this part conflicts with a law governing fishing for king crab in the Bering Sea and Aleutian Islands area under this paragraph, the previously approved law or regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a rule-related notice under paragraph (a)(2) of this section disapproving the conflicting provisions of the new law, the previously approved law or regulation will once again be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

(b) New State regulations.

(1) As soon as practicable after the designated agency

of the State of Alaska publishes for public comment a proposed regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the rule-related notice provided for in §676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a rule-related notice requesting comments by any interested person on that proposal and whether it is consistent with the FMP. The rule-related notice will require that such comments be submitted to the designated agency in accordance with that agency's administrative procedures. It will explain that the Secretary will determine whether any such proposed regulation that may be adopted by that agency is consistent with the FMP on the basis of the administrative record developed before that agency.

(2) Within thirty days after the adoption by the designated State agency of a proposed regulation referred to in paragraph (b)(1) of this section, and after consultation with the Council, the Secretary will publish in the FEDERAL REGISTER a rule-related notice of approval which (1) specifies any provision of that regulation that he finds to be inconsistent with the FMP; (2) declares that any provisions so specified do not govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; (3) declares that all provisions of that regulation that are not so specified are approved under this part and

govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and (4) states the findings and conclusions upon which the Secretary's action is based. The statement of findings and conclusions contained in the rule-related notice published under this paragraph (b)(2) will be based upon the administrative record developed before the designated agency of the State of Alaska and respond to relevant points raised in comments submitted to that agency on the proposed regulation.

(3) A regulation referred to in paragraph (b)(1) of this section may govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel registered under the laws of the State of Alaska, until the Secretary publishes the rule-related notice provided for in paragraph (b)(2) of this section. If a regulation of the State of Alaska that was previously approved under this part conflicts with a regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area under this paragraph, the previously approved regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a rule-related notice under paragraph (b)(2) of this section disapproving the conflicting provisions of the new regulation, the previously approved regulation will once again be considered approved

under this part with respect to vessels registered under the laws of the State of Alaska.

(4) As soon as practicable after the designated agency of the State of Alaska adopts without opportunity for public comment a regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the rule-related notice provided for in §676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a rule-related notice of approval having the content prescribed for a rule-related notice published under paragraph (b)(2) of this section. A regulation referred to in this paragraph may govern fishing for king crab in the Bering Sea and Aleutian Islands area by vessels registered under the laws of the State of Alaska until the Secretary publishes the rule-related notice provided for in this paragraph (b)(4). If a regulation of the State of Alaska that was previously approved under this part conflicts with a regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area under the second sentence of this paragraph, the previously approved regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a rule-related notice provided for in this paragraph (b)(4) disapproving the conflicting provisions of the new regulation, the previously approved regulation will once again

be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

§676.22 Reconsideration of a final rule-related notice by the Secretary.

(a) Within ten days after publication in the FEDERAL REGISTER of a rule-related notice of final action by the Secretary under §676.20 or §676.21 of this part, any person may request the Secretary to reconsider and change that action. The request will specify the proposed change in the action, and the reasons that change is believed to be necessary. The request will not be considered to have been made until it has been received at the address specified in the notice of the action. Within thirty days after publication of the rule-related notice of final action in the FEDERAL REGISTER, the Secretary will grant or deny all requests for reconsideration of that action that have been made, and will promptly publish a rule-related notice of such grant or denial in the FEDERAL REGISTER.

§676.23 Amendment of the FMP.

The provisions of §676.20 and §676.22 of this part apply upon implementation of any amendment of the FMP.

## Proposed Modification - King Crab FMP; Permits

1. distribution of fishing effort by time and area;
2. catch per unit of effort and rate of harvest;
3. relative abundance of age classes of king crab within the area in comparison with preseason prediction;
4. the proportion of immature or soft shell king crab being handled; and
5. any other factors relevant to the conservation and management of king crab.

### 4.10 Permit Requirements

The Secretary may by regulation require that All U.S. fishing vessels operating in the FCZ ~~must~~ have on board a current Federal permit issued annually by the Secretary, ~~of Commerce~~. The authority to fish in the FCZ of any vessel used in committing a serious violation of management measures adopted under this plan, as well as such authority of any other vessel owned or operated by the same person, may be suspended or revoked permanently.

### 4.11 Reporting Requirements

As the commercial Alaskan king crab fishery has grown over recent years, so has our knowledge of king crab. Information gained through scientific surveys, research, and fishermen observations, have all led to a better understanding of king crab biology, their environmental requirements, and behavior. These data are always accumulating and are of great benefit to both shellfish biologists and managers. Some of the most useful information is obtained in-season from fishermen and processors reports. Biologists gain data on crab distribution, female fecundity, disease and molting periods. Fishery managers are able to monitor harvest rates and determine areas of greatest fishing effort, thereby preventing overharvest of individual crab stocks. With the undisputed value of obtaining in-season fishery information, the current State catch and processing report requirements are an essential component of this FMP. This information must be provided regardless if the catch is landed in or outside of Alaska.



# North Pacific Fishery Management Council

James O. Campbell, Chairman  
Jim H. Branson, Executive Director

605 West 4th Avenue  
Anchorage, Alaska 99510



Mailing Address: P.O. Box 103136  
Anchorage, Alaska 99510

Telephone: (907) 274-4563  
FTS 271-4064

## M E M O R A N D U M

TO: Thorn Smith, NMFS Alaska Region

FROM: Steve Davis, NPFMC *Steve*

DATE: May 14, 1984

SUBJECT: Re-examination of BS/AI King Crab RIR and its Conclusions

As per your request, I have conducted a quick re-examination of the BS/AI King Crab RIR (dated October 1983) in light of new fishery data collected over the last two years. Doug Larson, Council staff economist, and I reviewed the Central Office concerns last fall prior to our resubmission of the King Crab FMP for fast track review. Our conclusion then, and mine now, is that the description of the impacts as analyzed in the RIR are still accurate and will not change even with the addition of more recent data.

The RIR describes in detail the various impacts which might be expected when utilizing a framework approach for particular management measures. A framework measure by definition establishes extremes or limits within which management action will likely fall. As long as management action lies between those framework extremes (which it has since 1981 even without an implemented FMP), the anticipated impacts and the costs/benefits of that action are described in the RIR analysis. For example, the FMP presents a step-by-step framework procedure for determining OY in different areas utilizing described criteria. Fishery data presented in the plan and in the RIR while from the 1980-81 season are used to illustrate how the framework procedure will work. Since 1981, the BS/AI king crab resource has undergone a tremendous decline. However, even with a reduction in harvestable crab the same OY procedure applies. The OY may now be lower than before but the framework procedure remains unchanged and is still considered valid by the scientific community. Fortunately, the framework is broad enough in this case to encompass the recent declines in crab stocks without requiring a plan amendment to revise the framework limits. Inclusion of 1982 or 1983 fishery data would not affect the conclusions at all, but only revise the examples used in this analysis. When we discussed the possible need to update historical summaries of the king crab fishery in the FMP, I mentioned that it was the Council's intent to make such revisions annually and the reason why such historical data was presented in the FMP appendices as opposed to the FMP itself. This will allow routine updating of the fishery statistics as necessary without requiring a plan amendment as is necessary with the Tanner crab plan. I would expect that we would begin routine submission for the appendices as soon as the plan is implemented.

# North Pacific Fishery Management Council

James O. Campbell, Chairman  
Jim H. Branson, Executive Director

605 West 4th Avenue  
Anchorage, Alaska 99510

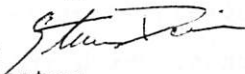


Mailing Address: P.O. Box 103136  
Anchorage, Alaska 99510

Telephone: (907) 274-4563  
FTS 271-4064

## M E M O R A N D U M

TO: Thorn Smith  
NMFS, Alaska Region

FROM: Steve Davis   
Plan Coordinator

DATE: May 18, 1984

SUBJECT: Supplemental Examination of BS/AI King Crab RIR

As per our conversation on May 16, 1984, you mentioned that the Central office wanted to see more of the analysis as referred to in my memo to you (dated May 14, 1984). I mentioned, both in the memo and on the telephone, that the addition of the 1981-82 and 1982-83 data series would not significantly affect the conclusions presented in the BS/AI King Crab RIR (dated October 1983). The numerical analysis presented in the RIR use primarily resource data from 1980-81 and in both the RIR and FMP it is made clear that the data is being provided as an example of how the plan would work. Since the RIR analyzes the framework procedures for managing this fishery, insertion of more recent data, while changing the example, would not change the framework procedure. Therefore, I concluded that the RIR is satisfactory in its present condition.

In my earlier memo I referred to the OY procedure as an example. I chose this example given that it is based on the condition of the resource and by nature must be flexible to accommodate extreme fluctuation in the resource. This frameworked measure was designed in this manner based on our knowledge of extreme fluctuations in the crab stocks observed in the 1960's and early 1970's.

Since the Central office is interested in reviewing my analysis further, let me continue to use my OY example. I will present data collected in 1982-83.

In my earlier memo I mentioned that management action taken by the State of Alaska has fallen within the framework even without an approved FMP. This is due in part to the North Pacific Council and Alaska Board of Fisheries agreeing to jointly manage this fishery using the proposed FMP. The plan, in essence, has been undergoing a trial run and we have been pleased with the responsiveness of the framework approach.

In March 1982 at its annual shellfish meeting with the Board, the Council received Attachment 1 by NMFS which provides estimated catches of red king crab in Bristol Bay for 1982. These catches, which are acceptable in terms of their effect on the reproduction of the stock, are based on 1981 abundance estimates from the annual NMFS trawl survey and 1981 fishery removals. Two sets of catches are presented in the table, based on two possible natural mortality schedules for sub-legal crabs.

The procedure for determining ABC in which a spawner-recruitment relationship is available, describes how ABC will equal the maximum catch which maintains the minimum number of spawners (i.e. 20-40 million fertilized females). The dotted line in the table represents this minimum threshold, where all values above the line represent biologically safe harvest given a variety of size limit and exploitation rate combinations. Following this procedure the ABC was selected as 27-43 million lbs. in 1982, presented as a range due to the uncertainty surrounding the rate of natural mortality on sub-legal crabs.

Once ABC had been identified, the OY is determined as described in the FMP. A minimum size limit was selected at 6.5" based primarily on industry requirements, and an exploitation rate of .6 was chosen because of the relative abundance of large male king crab, the significant reduction in estimated harvest as compared to prior years, and on processing limitations. Examining the table in light of this step-by-step procedure led the Council to approve an OY range of 19-34 million lbs. for 1982.

You will note that while the numbers have changed from the example presented in Table 1 of the FMP (same as Table 4 in RIR), the framework procedure has not.

In June 1982, NMFS conducted its annual trawl survey in the southeastern Bering Sea. Results from that survey became available in early September and are provided as Attachment 2. The survey showed that the abundance of legal red king crabs was the lowest on record, and significantly alters the pre-season estimates reviewed in March. The survey indicated the legal abundance of crab to be about 4.4 million animals which equates to approximately 25 million lbs. When the previously approved .6 exploitation rate is applied, a 15 million lb. OY, or a range of 10-20 million lbs. is the result. This revised OY was publicized throughout the fleet and it became the range used by management at the start of the season. Again, the numbers have changed due to new information, but the framework procedure does not.

On September 10, 1982 the Bristol Bay king crab fishery opened with 58 vessels on the grounds. This compares to 166 and 200 vessels for the 1981-82 and 1980-81 seasons, respectively, with most of these vessels choosing to fish king crab in other areas or participate in other fisheries.

With the extreme, low density of king crab in the area, vessel trips were very long and deliveries very small. Crabs averaged only 5.6 lbs., 0.7 of a pound less than the 1981-82 season. By the end of the second week, less than one million lbs. of king crab had been delivered out of the Bristol Bay area.

During this period, a state observer program, funded by the Council, provided data showing a high incidence of handling sub-legal and female crab while fishing. Poor catches and catch per unit of effort data (a measure used for calculating relative abundance) indicated only 4.7 million lbs. of legal crab available at the 0.6 exploitation rate. As more data was received and evaluated, it became quite apparent to biologists that the Bristol Bay area was experiencing a serious female fecundity problem and that the number of fertilized females was well below the 20-40 million threshold. Data later showed that the number of fertilized females on the grounds had fallen from 48 to 18 million crabs in one year. For this reason, the Bristol Bay fishery was closed on October 10 with a final catch of 3 million lbs.

Did the FMP fail in 1982? No it did not. The plan did what it was designed to do. It provided the necessary guidance, objectives, and management measures to swiftly respond to changes within the fishery. It provided management with a set of measures to allow this flexibility. The OY procedure in particular provided a tremendous service to the fishing industry by presenting survey data and harvest estimates in a easy-to-understand, logical manner and yet early enough in the year to allow fishermen and processors to respond to the anticipated shortfall in catch. The RIR describes the potential impacts of management decisions using the framework plan. I believe the framework as presented in the plan and analyzed in the RIR, still fulfills the Council's intent for a flexible management system. The two-year trial run under the plan has shown that this plan works.

Table 2.--Estimated catches of red king crab males for 1982 in Bristol Bay, based on two different natural mortality schedules. (millions of pounds)

Size Limit (inches)	Exploitation Rate							
	.3	.4	.5	.6	.7	.8	.9	1.0
<u>"Normal" Sub-legal Mortality</u>								
7.00	9	12	15	19	21	25	28	30
6.75	13	18	22	26	30	35	39	43 = ABC
6.50	18	23	28	34	40	46	52	57
6.25	22	29	36	43	52	59	66	73
6.00	27	36	45	54	62	72	81	89
5.75	33	43	55	66	76	87	98	109
5.50	36	48	60	72	83	95	108	120
5.25	39	52	64	77	90	103	116	130
<u>"High" Sub-legal Mortality</u>								
7.00	7	9	12	14	15	18	19	22
6.75	8	11	14	16	19	22	25	27 = ABC
6.50	9	13	16	19	23	26	29	33
6.25	13	16	21	26	29	34	38	42
6.00	16	21	27	32	38	42	48	53
5.75	19	27	34	40	47	54	61	67
5.50	22	29	38	45	53	60	67	75
5.25	25	33	41	49	57	66	74	82

Table 1. -- Population estimates for eastern Bering Sea king crabs from NMFS surveys (millions of crabs).

---

Bristol Bay and Pribilof Red King Crabs

---

Year	Pre-recruits <u>1/</u>	Legals <u>1/</u>
1969	19.5	9.8
1970 <u>2/</u>	8.4	5.3
1972	8.3	5.4
1973	25.9	10.9
1974	31.2	20.8
1975	29.6	21.2
1976	49.3	32.7
1977	63.9	37.6
1978	52.5	46.6
1979	38.8	45.5
1980	23.9	36.1
1981	18.9	10.8
1982 <u>3/</u>	17.1	4.4

---

ALASKA BOARD OF FISHERIES  
DECISIONS REGARDING  
MANAGEMENT OF DOMESTIC KING CRAB FISHERIES  
IN THE  
BERING SEA/ALEUTIAN ISLANDS AREA  
MARCH, 1984

During its March 1981 meeting, the Alaska Board of Fisheries developed the Joint Statement of Principles on the Management of Domestic King Crab Fisheries and the Bering Sea/ Aleutian Islands (BS/AI) King Crab Fishery Management Framework. These documents, which were prepared in cooperation with the North Pacific Fishery Management Council, clearly define the roles of both entities in the management of the domestic king crab fishery in the BS/AI area. The board and council formally adopted the Joint Statement of Principles in October 1981.

In conformance with the above mentioned documents and recognizing its responsibility for the management of the domestic king crab fisheries in the BS/AI area, the board received public testimony, Alaska Department of Fish and Game (ADF&G), Alaska Department of Public Safety (ADPS), Alaska Department of Law (ADL), and National Marine Fisheries Service (NMFS) staff recommendations, and discussed at length the issues related to regulations managing these fisheries during its March 1984 meeting. During a portion of their meeting, the board met jointly with the North Pacific Fishery Management Council to consider issues of mutual concern. The decisions of the board are presented in summary. Further detail is available on the tape record of the board meeting.

The Fishery

In the last five years, the Alaska king crab fishery has experienced both record high and record low harvests. Last fall, former major king crab production areas, such as Bristol Bay, were not opened to commercial fishing because of extremely low stock levels. The resultant effect on reduced crab harvests has had a major impact on all sectors of the industry and upon the communities which rely heavily on successful crab fisheries. Large fleets and increased effort in the few remaining crab fisheries have put additional pressure on the target fishery and increased the management risks of conducting fisheries at low stock levels.



As recently as the 1980-81 season, king crab harvests in the BS/AI area peaked at 164 million pounds. During the 1983-84 season, harvests declined to 22 million pounds. Additionally, there has been a significant shift of catch composition. In previous years, the predominate harvest was red king crab; in recent years, the harvest is composed of mostly blue and brown king crab. The low harvests have been the result of reduced population levels which, generally, have experienced successive years of poor to failed recruitment. In the near term, further declines in harvest are expected. Harvests over the long term are uncertain.

The reasons for the crab stock declines are not well understood. In recent years, environmental conditions have changed, including documented increases in ocean temperatures. The observed temperature changes are within the known temperature regime which king crab live. Predator populations have increased and several diseases have been identified. However, the present data are simply not complete enough to quantify any of the above factors and may never be without dramatic increases in research over a significant time period. If the funds are committed for these types of basic research programs, then it may be possible to better anticipate population changes. Advance warning may allow for better management and industrial planning to respond to these changes.

On a more promising note, management may be able to respond to other causitive factors which are assumed to contribute to stock declines. Establishing minimum spawning population requirements and limiting incidental harvests of crab in other fisheries, will likely improve stock rebuilding potential. Many of these factors are not fully understood and will require additional research. It is known, for instance, that female stock levels in several fisheries, where abundance estimates are made for females, have shown dramatic declines which parallel declines observed in the male portion of the stock. Commercial fishing undoubtedly has had an effect on reducing the legal male portion of the stock, but what is less understood are the effects of other factors, such as handling, on the female and prerecruit components of the stocks. The evidence is circumstantial, but these effects may be great. We know that in the Bering Sea Tanner crab fishery, 1.6 king crab are also captured and subsequently discarded for every legal male Tanner crab captured. We also know that large numbers of crab of various sizes and both sexes are being routinely harvested in the demersal groundfish fisheries. These fisheries undoubtedly have some

effect, however, the data necessary to quantify these effects are poor or non-existent in the domestic groundfish fisheries. Information for the joint ventures and foreign groundfish fisheries are more complete and rates of observer coverage are improving.

### Areawide Provisions

The Board considered a proposal to change the king crab minimum carapace width size limit in all areas to 5.5 inches for brown king crab and 6.5 inches for red king crab. The proposers claimed that commercial yield would be increased and conservation goals met as a result of reduced size limits. The staff pointed out that red king crab size limits were 6.5 inches in all BS/AI fisheries except for a 4.75 inch limit in the Norton Sound section of the Northern District. Little biological information has been available to establish size limits for the newly developing brown crab fisheries until recently, therefore, the minimum size limits for brown king crab was set at the same size as red king crab. During their March 1983 meeting, the Board placed a high priority on collection of adequate data to set appropriate brown king crab size limits. Sufficient information was available at that meeting to justify lowering the size limit to 5.5 inches in the Northern District. Following the NMFS's summer survey, additional data were collected to justify lowering the size limit to 5.5 inches for brown king crab in the Pribilof fishery. The Board took immediate action to reduce the Pribilof brown crab size limit prior to the October 1, 1983 fishing season opening date. Further analysis of data by NMFS during the winter lead to recommendations at this meeting a 5.5 inch size limit for the Bristol Bay (Area T) fishery and a 6 inch minimum size limit for the Dutch Harbor (Area 0) fishery. The proposers agreed with the NMFS analysis and recommended the Board adopt these new size limits. The Board then amended the proposal and adopted a 6 inch size limit for brown king crab in Area 0 and a 5.5 size limit for brown king crab in Area T.

The Board took action to reject a proposal which would have established a more liberal king crab harvesting strategy. A "3-S" (Size, Sex, and Season) management strategy was proposed as an alternative to the current exploitation strategy embodied in the Board and Council's Bering Sea/Aleutian Island king crab management framework. The proponents of the 3-S strategy cited industrial

and marketing benefits from the increased harvest balanced against minimal conservation risks. The staff, while not opposed to a 3-S strategy at higher stock levels, did not support the more liberal strategy on conservation grounds. In most king crab fisheries, successive poor or failed recruitment have lead to historically low abundance levels. Record low levels in former major production areas have necessitated pre-season management closures in order to protect the stocks from further decline. The staff also expressed concern for poor enforcement of minimum size limits on catcher/processors and float processors as well as probable increased handling mortality which would result from longer fishing seasons.

The Board took action to liberalize the exploratory harvest of brown king crab by establishing a year round season by permit in all BS/AI fisheries except Adak. The Board reasoned that the permit system would allay enforcement concerns while allowing fishermen a greater opportunity to explore for under-utilized brown crab stocks. The Adak fishery was exempted from the permit system because brown king crab have been harvested for the past four seasons and is considered a developed fishery.

The Board rejected a proposal which would have permitted ADF&G to allow a vessel additional fishing time if it aided another vessel in distress during an open fishing season. Proponents maintained that this measure was necessary due to the lack of adequate Coast Guard search and rescue capability in the area. Fishermen would not hesitate to render aid if assured that lost fishing time would be replaced. The Board, however, decided that it would be difficult to determine which cases merited additional fishing time and concluded that the proposed regulation provided too much opportunity for abuse. Additionally, the Coast Guard indicated that they were attempting to establish a base in Cold Bay.

#### Areas and Boundaries

King crab statistical areas and district boundaries in Areas R, O, and Q were revised. The Board accepted staff recommendations to adjust boundary definitions of the Adak, Dutch Harbor, and Bristol Bay areas in order to better define Brown king crab fisheries. Originally the boundaries were justified for

red king crab fishery distribution. New information gained on the brown crab resource necessitated the redescription of these areas.

The Board considered a proposal to extend the Western Boundary of the Norton Sound Section of the Northern District (Area Q) out to the U.S. - Russian Convention line of 1867. The supporters of the proposal requested the change to allow for exploratory king crab fishing following the Norton Sound fishery. The 1983 Norton Sound fishery lasted 3.8 days and the fleets were idle waiting for the next crab opening. Following staff comment on the distribution of known crab stocks in the area, the Board amended the proposal and created a new St. Lawrence section. The new section is that portion of the General District North of Cape Romanzof, West of 168° West Longitude excluding Norton Sound. Creation of the new St. Lawrence section will give the crab fleet an opportunity to explore for new crab stocks between the close of the Norton Sound fishery and the opening of the St. Matthew fishery.

The Board considered three proposals which were intended to reduce commercial and subsistence conflicts in the king crab fisheries near St. Lawrence, King, and Diomed Islands. A proposal to prohibit commercial fishing north of Cape Romanzof was rejected as too restrictive. Another proposal to reduce commercial harvest to one half of the exploitation rate determined under 5 AAC 34.080 was also rejected because of insufficient data to determine rates of exploitation. A third proposal recommended increasing the closed commercial area around St. Lawrence, King, and Doimedes Island to 30 miles. In 1981 the Board adopted a 3 mile closure around these islands to protect traditional subsistence uses in the area. After a lengthy discussion and a review of the available data, the Board amended the proposal to provide for a 10 mile closure around St. Lawrence, King and Diomed Island. The action was necessary to provide an added buffer between the two users, commercial and subsistence.

### Seasons

After hearing considerable public testimony and staff comment regarding appropriate season openings, the Board adopted the following opening dates:

Norton Sound (Q)	August 1
St. Lawrence (Q)	August 1

St. Matthew (Q)	September 1
Pribilof (Q)	October 1
Bristol Bay (T)	October 1
Adak (R)	November 10
Dutch Harbor (O)	November 10

The opening dates were recommended by a working group of industry representatives. These dates are identical to the 1983 season except for an earlier opening in St. Lawrence and a later opening in St. Matthew. The earlier opening date in St. Lawrence will provide additional exploratory fishing opportunities following what is expected to be an extremely short Norton Sound fishery. Many vessels have tendering contracts in other fisheries and the September 1 opening date will allow a better opportunity for these vessels to participate in the St. Matthew fishery. All seasons addressed the need to protect crab during their mating and molting periods. Staff stated however, that in order to maximize the reproductive capabilities of the female crab population, some safeguards might be necessary if summer surveys or fisheries performance demonstrate low population levels. The staff further stated that the red king crab fisheries in Dutch Harbor and Bristol Bay will likely be closed for the 1984 season because of low population levels.

#### Gear Storage

The Board adopted a proposal to move the pot storage area in Bristol Bay. The Board reestablished a pot storage area from 57° to 58°N latitude and 164° to 166° West longitude while deleting the existing pot storage north of the Alaska Peninsula. The staff had no objections to moving the gear storage area. This area was previously described in State and Federal regulations and only recently was the gear storage area moved at industries' request to the area north of the Alaska Peninsula. The supporters of reestablishing the old pot storage area cited fuel savings and vessel safety consideration as the primary reasons for moving the storage area closer to the Pribilof fishing grounds. Additionally, oil company exploration work in the existing pot storage area north of the Alaska Peninsula was causing some gear conflict. The domestic yellowfin trawl fishery was also operating in this area. With the demise of the red king crab fishery in the Bristol Bay area and the shift of commercial fishing effort

farther north, the existing pot storage area was no longer considered desirable.

A proposal which would have established a second pot storage in the St. Matthew-Pribilof area was rejected by the Board as unjustified. The proposer cited the need to provide gear storage closer to the St. Matthew fishery in order to reduce running time to the existing pot storage area. The staff commented that in addition to the existing pot storage area between the Pribilofs and St. Matthew, gear may be stored in less than 25 fathoms around the Pribilof Islands from September 1 through May 31. The staff stated that there was adequate storage available and therefore, was opposed to adding another gear storage area for the fishery. The staff was not opposed to moving the storage area as there were no known crab stocks in the proposed storage area. Industry representatives testified in opposition to the new area on the grounds that the current storage area was preferable.

#### Landing, Inspection, and Reporting Requirements

The Board adopted a proposal which eliminated the 116 hour bait up period for the Bristol Bay, Dutch Harbor, and Pribilof Island king crab fisheries. Previous regulations permit baited fishing gear to be on the fishing grounds 116 hours prior to vessel hold inspections. Following the hold inspection, vessels are allowed to land king crab. These regulations were adopted in earlier years to provide vessels the opportunity to haul several loads of gear to the grounds and then provide for a "fair and equitable" start for all participants. At higher stock levels the staff has no objection to the bait up period, but at the current low stock levels the conservation risks are judged to be great. Many of the fisheries have become so short because of the intense fishing effort that there is concern that overfishing may occur because the staff will be unable to monitor the fishery during the 116 hour bait up period. Public testimony was offered both in support and opposition to the proposal. Supporters cited the need for better monitoring of the stocks and concerns for overfishing; opponents cited the need for a fair start and concern for vessel safety from hauling too much gear.

The Board took action to eliminate the 36 hour contact period for the Pribilof District described in 5 AAC 34.035 (e)(3). King crab fishermen are required to

contact and report to ADF&G any king crab which are aboard a vessel more than 24 hours after a season closures. This regulation was enacted because of enforcement concerns for fishing after the season closure. In the Pribilof fishery, 36 hours were allowed due to the extra vessel running time to Dutch Harbor, then the major processing port. Recently, the vast majority of the processing capability has moved offshore. The staff pointed out that crab are processed on grounds and with the short seasons in the Pribilofs, the additional reporting time presents an enforcement and conservation problem. Public testimony concurred with the staff advice to eliminate the regulation.

The Board considered a staff proposal to provide for a 24 hour bait up period for the General Section of the Bering Sea statistical area. The proposal was intended to ease vessel hold inspection requirements prior to the fishing season. However, the staff withdrew the proposal since it was inconsistent with earlier Board action which repealed the 116 hour bait up period in the Bristol Bay, Dutch Harbor and Pribilof Island fisheries.

The Board adopted a proposal to authorize the staff, under certain circumstances, to extend the time king crab gear could be legally stored in a non-fishing condition on the fishing ground after the close of a fishing season. Currently, all fishing gear must be removed from the fishing grounds within seven (7) days of the season closure. (No crab can be landed after 24 hours following the closure of the season). In certain circumstances, major vessel breakdown or severe weather conditions prohibit vessels from removing all fishing gear from the grounds within the required seven day period. As a result of the Board action, the Department will have the latitude to extend the gear removal requirements on a case by case basis. This new regulation is consistent with similar provisions for the Tanner and Dungeness crab fisheries.



AGENDA D-2(b)  
MAY 1984

UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
P.O. Box 1668  
Juneau, Alaska 99802  
Telephone (907) 586-7414

DATE: March 21, 1984

TO : F/AKR - Robert W. McVey  
ADF&G - Don W. Collinsworth  
NPFMC - Jim H. Branson  
FROM: GCAK - Patrick J. Travers

SUBJ: Effect of Substituting a Landing Fee for the Nonresident Fishing Permit Requirement Under the King Crab FMP

Some time ago, we discussed the reasons that the current State of Alaska requirement that nonresidents fishing for king crab in the FCZ who land their crab in Alaska must obtain a State fishing license and vessel registration would be disapproved under the king crab FMP. We also discussed ways in which the possible loss of revenue to the State that might result from this could be averted without running afoul of the Magnuson Act. This is a summary of the conclusions reached in these discussions.

Because the State license requirement is a regulation governing fishing for king crab beyond the three-mile limit, it would be subject to approval or disapproval by the NMFS Regional Director under the FMP. This would be true whether or not the FMP included a requirement for a Federal permit. The Regional Director would be legally prohibited from approving the State requirement for two reasons:

(1) the State charges nonresidents three times as much for licenses as it does residents of Alaska, thus violating National Standard 4 of the Magnuson Act; (2) the fees charged by the State to both residents and nonresidents for licenses exceed the administrative costs of issuing the licenses, a violation of Magnuson Act section 304(d). It should be noted that this would be true regardless of the fairness or constitutionality of the State fee structure.

I was asked whether this result would be changed if the State allowed nonresidents to forego the purchase of a fishing license if they fished for king crab only beyond the three-mile limit, but required them instead to obtain a "landing permit" if they wished to land their catch in Alaska. The fee for the landing permit would be intended to compensate the State for benefits conferred on the nonresidents out of State revenues and, whether coincidentally or not, would be the same as the current fee for nonresident permits. In light of consultation with my colleagues in Washington, I have concluded that such a landing permit requirement would not be subject to review by the Regional Director under the king crab FMP, because it would not purport to govern fishing for king crab beyond three miles. While such a requirement would not be subject to review under the Magnuson Act, it might still, of course, be subject to challenge under general constitutional standards in the application of which NOAA has no special role.





Without further Council action, it should be with the full recognition

If you do make a determination to initiate Secretarial review

specific approval/disapproval of the permit requirements.

action of the regulations will be reserved in the proposal pending the

the plan states a requirement to have a Federal permit; however, that

As I understand your suggestion on the Federal permit question,

!w/10/10/84

documents were inconclusive in their findings).

2. Agreement on the significance determination (the earlier

laws will be handled; and

be adopted, and how comment on the Alaska regulations and

tions and laws are going to be adopted, how they will

relating to what portion or portions of the Alaska regu-

1. The preamble and regulations, particularly the permit

package. The items still needing attention are

pared to initiate Secretarial review as soon as we have a complete

placing the king crab plan in Secretarial review (Day 1). We are pre-

the five items identified in November 1983 which presented us from

We were withholding any further action pending regional action on

1984, regarding the king crab fishery management plan.

This is to briefly summarize our telephone conversation of May 10,

SUBJECT: Fishery management plan for king crab

FROM: I/M - William F. Jensen, Jr.

TO: I/AR1 - Thorae Smith

DRAFT: WJensen:mhb:5-11, 1984

that the trail has gone cold and it may be necessary to make special effort to inform the public that the review is under way.

I recommend that you get the best reading you can regarding the view of the States as proceeding so we can all be fully aware of that attitude from the beginning.

One final point regarding the analytical documents and how we satisfy the requirements of law. The data base being used in through the 1980-81 season. Under such a framework plan, there must be some provision to update the status of the fishery and allow a structural review of annual approval/disapproval of state regulations by the NMFS Regional Director (criteria) and review by the public. Enclosed is a memorandum dated November 25, 1983 (a copy of which was sent to R/AR on December 1, 1983) regarding that issue. Incidentally, the California, Washington, Oregon salmon framework plan has not been started on Day 1 yet. It was intended to be the trailblazer for these procedures. If you go ahead with the King crab plan, we may have to change tactics.

Attachment



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Washington, D.C. 20235

F/MI1003

NOV 25 1983

TO: F/MI - Roland A. Pinch

FROM: F/MI1 - W.P. Jensen

*Mary H. Thompson*

Subject: Meeting with OMB and DOC Regarding Review of FMP's and Amendments

I met with Ed Clarke (OMB), Bob Ellert and Don Malone (DOC), Jim Struman and Jay Johnson (CC) on November 21, 1983, to continue the discussions on an informal procedure for review of FMP's and amendments by OMB and DOC.

The king crab framework plan was used as a subject at the meeting as an example of a plan which was unique and had not yet been placed on Day 1 of the fast track schedule. DOC and OMB representatives felt that even at this early stage, they had limited opportunity for constructive comment on this FMP. We agreed to schedule the next meeting as soon as possible and use the COW framework salmon plan as a subject.

On the king crab plan we agreed:

1. The analyses being prepared will describe the king crab fishery as it has existed under State management. At the time of adoption of State regulations annually or adoption of changes, a supplemental impact analysis will be prepared describing the impact of the changes. In particular, the supplemental statement should demonstrate that any economic allocations were fair and reasonable under the circumstances and describe the differential impact on different classes of vessels.
2. The Regional Director's decisions would be guided by pre-determined analytical procedures and criteria to be followed when he considers State regulations for conformance with the plan objectives and national standards. We should advise the Regional Director to prepare these procedures and criteria.

cc: F/MI1, F/MI2

F/MI1:NMFS:WPJensen:634-7449:11/22/83:ih (d) (ca RAF) (D44)  
Revised:WPJensen:634-7449:11/23/83:ih (f)