

North Pacific Fishery Management

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

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



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

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

June 15, 1981

Honorable Joel Pritchard
House of Representatives
2349 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Pritchard:

The North Pacific Fishery Management Council at its May meeting considered several possible approaches to the management of the king crab resource off Alaska. They decided against the approach utilizing a Joint Statement of Principles and Management Framework with the Alaska Board of Fisheries, but not requiring a Secretariially-approved fishery management plan, as a long-term solution. They elected to develop a framework fishery management plan which will go through normal Secretarial review and approval and delegate day-to-day management to the State of Alaska. Their action is explained in detail in the attached letter to the Assistant Administrator for Fisheries.

Recognizing that in the short-term -- that is, for the 1981 fishing season -- there is no hope of developing and implementing Federal regulations, the Council adopted for 1981 only the proposed Joint Statement of Principles and the Management Framework; stating that because of the commitment from the Alaska Board of Fisheries to adhere to those documents, the Council found the 1981 king crab fishery in the Bering Sea and Aleutian Islands did not require additional conservation and management beyond that provided by the State of Alaska. For 1982 and beyond, the Council expects to have an FMP developed, reviewed, and implemented by the Secretary that will set forth basic policies and management standards within which management measures can be developed jointly by the Alaska Board of Fisheries and the North Pacific Council. It is the intention of the Council to work closely with the State of Alaska, including holding joint public hearings in Alaska and the state of Washington and meeting together at least annually to develop management measures for the forthcoming seasons.

The Council believes that this approach is in full conformity with the spirit and letter of the MFCMA and that it will still substantially reduce the complex, time-consuming, expensive, and needlessly duplicative processes of the traditional FMP.

The Council appreciates your expressed concern about the approach they considered that did not use a Secretariially-approved FMP. The course of action adopted at the May meeting responds to the objections voiced in your letter of April 15 to Secretary of Commerce Baldrige. The framework FMP will be subject to Secretarial review and approval, but should be able to work

Congressman Pritchard
June 15, 1981
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through the much faster and more flexible State of Alaska regulatory system. The Federal regulatory system is becoming increasingly cumbersome and unresponsive.

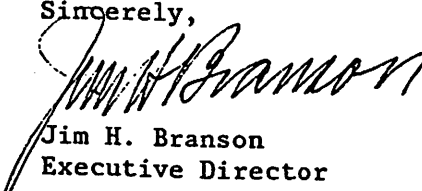
Management of a resource as volatile as fisheries requires rapid regulatory response. As an example, in the FMP for the Tanner crab fishery, in effect for over two years, the seasons are closed by field announcement. Authority to make the closures has been delegated to the NMFS Regional Director through the FMP and re-delegation by the Secretary. The Regional Director usually has from ten to fourteen days of warning from the management biologists before the catch limit is reached. That has not been enough time for the regulatory process to function. This year Federal regulations have not been implemented until days or weeks after the season had been closed by the State of Alaska.

A similar situation has occurred in the salmon troll fishery off Southeastern Alaska this spring. FMP amendments for a proposed season opening May 15 ran head-on into not just the complexities of the MFCMA, but into the additional layers of review the Administration now requires at Departmental level and in OMB. As a result, the regulations were not implemented by the 15th of May. By law the season should not have opened, but the fishing fleet was given to understand that if they fished in the FCZ in conformance with State regulations (which opened the season on May 15th) the Department of Commerce would not enforce the closure. That embarrassing situation still exists a month later. A closure to protect coho and chinook salmon will be necessary sometime in July. Can the Federal government react in time? If they cannot, will the fishermen be as cooperative for a closure?

This is a very serious situation and the Council is most appreciative of your pledge to provide whatever assistance may be needed to improve the efficiency of management plan development under the MFCMA. Not only is timely plan development necessary, the ability to make necessary adjustments during the course of the year is even more critical. Authority delegated to the field and rapid response time is required for efficient fisheries management.

Thank you for your concern and assistance in this matter. The Council looks forward to working with you to improve the Federal fishery management system.

Sincerely,



Jim H. Branson
Executive Director

Identical letters to: Emery, Studds, Packwood, Gorton, Jackson, Hatfield

North Pacific Fishery Management Council

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

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



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

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

June 12, 1981

Honorable Donald E. Young
House of Representatives
2331 Rayburn House Office Building
Washington, D.C. 20515

Attn: Rod Moore

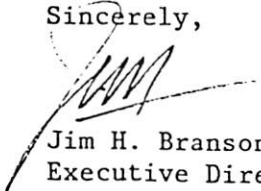
Dear Don:

After considering the proposal for joint management with the State of Alaska of the Bering Sea king crab fishery at its last meeting, the Council altered course slightly and directed development of a framework fishery management plan. I have attached my letter of explanation to Terry Leitzell of the details of the Council's actions. Basically they propose to develop a framework FMP that will be sent to the Secretary for review and approval and then are asking the Secretary to delegate most of the management and regulatory authority back to the State of Alaska.

That delegation has ample legal precedent, as you will see in the enclosed copy of Pat Travers' legal memo of December 8 to the North Pacific Council. It will provide closer coordination with the State and overview by the Council and the Secretary, but should still retain the flexibility needed to manage a fishery in real time -- a flexibility that we have not been able to attain with conventional FMP's and Federal regulations.

The Council is deeply appreciative of your support on this matter during the past several weeks. We believe that the approach now being used responds to the objections of the Congressional members and industry groups that opposed the Council's initial approach to resolving FCZ management of the king crab resource in the Bering Sea. We will keep you fully informed of developments. Thank you for your support and help.

Sincerely,



Jim H. Branson
Executive Director

Identical letters to Murkowski and Stevens

PMC2B/N

North Pacific Fishery Management Council

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

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

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



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

June 10, 1981

Mr. Terry L. Leitzell
Assistant Administrator for Fisheries
National Marine Fisheries Service
3300 Whitehaven Street
Page Building 2
Washington, D.C. 20235

Dear Terry:

On May 28-29 the North Pacific Fishery Management Council acted on the proposed king crab management system for the Bering Sea. I had described the proposal before the Council and asked for your advice on this innovative approach by letter on May 1. The Council appreciates your response which arrived in time for their deliberations on the 28th and 29th.

Recognizing that there were drawbacks to the approach under consideration, and that it had met with considerable opposition from very respected sources, the Council opted for an approach closer to the formal FMP procedure than that originally envisioned--which was basically an agreement between the North Pacific Council and the Alaska Board of Fisheries to manage the fishery under a Management Framework and a Joint Statement of Principles. The approach chosen has been a second option for the past several months. The NPFMC had favored the original option because it would have avoided to the greatest degree possible the complex, time-consuming, expensive, and needlessly duplicative processes of a traditional FMP.

The option chosen should still reduce the complexity, expense, and lack of responsiveness inherent in a traditional FMP and in addition provide for full Secretarial review of the basic FMP. A minimum of federal regulation would be necessary since routine management authority would be delegated to the State of Alaska. That delegated authority would be exercised within specific limits as specified in the FMP and through a constant consultative process with NPFMC.

The Council recognized that it was impossible to get any sort of federal regulation in place for the 1981 king crab fishery. They therefore adopted for 1981 only the proposed Joint Statement of Principles and the Management Framework. Because of the commitment from the Alaska Board of Fisheries to adhere to those documents, the Council found that the 1981 king crab fishery in the Bering Sea and Aleutian Islands does not require conservation and management other than that provided by the State of Alaska.

Specifically the Council made two motions. First, "That:

- (1) The Council adopt the Joint Statement of Principles on the management of domestic king crab fisheries in the Bering Sea and Aleutians by the Alaska Board of Fisheries as revised March 26, 1981;
- (2) The Council approve the Alaska Board of Fisheries Bering Sea/Aleutian Islands King Crab Fishery Management Framework dated April 1, 1981;
- (3) The Council find, on the basis of the commitment of the Alaska Board of Fisheries to adhere to the Statement of Principles and Framework mentioned above, that the 1981 king crab fishery in the Bering Sea and Aleutian Islands area does not require conservation and management other than that provided by the State of Alaska.

During this period of time the State will continue management and enforcement of the king crab fishery."

That motion passed on a voice vote of 8 to 3.

The Council then moved and passed on a voice vote of 10 to 1 that:

"The Council direct the staff to prepare for consideration at the July meeting a fishery management plan for the management of the king crab fishery of the Bering Sea and Aleutians to go into effect by the beginning of the 1982 fishery. This plan shall be a framework plan that shall maximize the authority of the managers of the fishery to change management measures without amendment of the plan itself, subject to basic policies and management standards incorporated in the plan. The plan shall be based upon the Alaska Board of Fisheries Bering Sea/Aleutian Island King Crab Fishery Management Framework dated April 1, 1981. It is the intent of the Council that this plan be implemented by a delegation of Federal authority to the State of Alaska and a draft regulation having this effect shall accompany the plan through all stages of administrative review."

The Joint Statement of Principles will need revision to reflect the changes in procedure for joint Council/Board development of regulations. It is the Council's intention that they meet jointly at least annually and conduct joint public hearings, both in Alaska and in the state of Washington. The Council would work actively with the Board in the development of annual regulations through the State process.

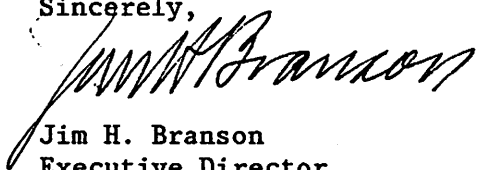
The Council believes that this approach will be more acceptable than the one originally considered. It provides for full Secretarial review of the FMP and close monitoring of the regulatory process but will prevent needless duplication of regulation. The State of Alaska will be able to continue its management and enforcement programs through measures developed jointly by the Board and the Council and adopted by the State but given the weight of Federal regulations.

It appears virtually impossible to manage a fishery by Federal regulation using the approaches tried thus far. Problems are too numerous to enumerate. I cite as examples the inability to promulgate timely regulations for the salmon troll fishery off Alaska and the failure of the last several NMFS attempts to close Tanner crab seasons by field announcement.

We have begun preparation of a framework FMP for consideration by the Council at the July meeting. By maintaining a very tight schedule it should be possible to coordinate with the Board of fisheries at a joint meeting in early December, forwarding the FMP and supporting documents to you for final review shortly after that meeting. That should allow implementation by the opening of king crab season in 1982 which usually occurs around September 15. We will, of course, send drafts of all documents as they are developed to aid your review process.

The Council would appreciate your thoughts on this approach as early as possible. Legally it seems to meet the requirements of the MFCMA and there is ample precedence cited in Travers' December 8, 1980 memo for adopting State regulations. It appears to be the best hope for management to respond in a timely manner to changing conditions in the fishery and the resource.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim H. Branson".

Jim H. Branson
Executive Director



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: December 8, 1980

TO : North Pacific Fishery Management Council Members
NPFMC - Jim Branson
GCF - Jay Johnson

FROM: GCAK - Patrick J. Travers *Pat*

SUBJ: Alternatives to Conventional King Crab FMP and Implementing Regulations

INTRODUCTION

The purpose of this memorandum is to discuss the availability to the North Pacific Fishery Management Council (Council), the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), and the State of Alaska, of management procedures for the western Alaska king crab fishery (fishery) other than the preparation and approval of a fishery management plan (FMP) and the implementation of that FMP through the promulgation of detailed regulations by the Assistant Administrator.

Since Alaska attained statehood in 1959, its government has asserted and effectively exerted a high degree of management authority over the fishery both within and without the three-mile limit, and with respect to both fishermen residing in Alaska and those residing in other states, particularly the State of Washington. In exercising this authority, Alaska has taken advantage of the fact that the fishery takes place in extremely remote areas, and that it has until recent years almost exclusively required the delivery of live crab to shore-based processors. Because the landing of live crab caught in the fishery in a state other than Alaska is unfeasible due to the fishery's remoteness, both Alaskan and non-Alaskan participants in the fishery have of necessity landed their catches in Alaska, thereby subjecting themselves to a comprehensive system of landing laws and regulations governing many features of the fishery. These regulations are promulgated by the Alaska Board of Fisheries (Board) and implemented by the Alaska Department of Fish and Game (ADF&G), both of which are agencies of the Alaska state government. Alaska's authority to use these regulations to manage participation in the fishery beyond the three-mile limit by non-Alaskans was endorsed by the Alaska Supreme Court in State v Bundrant,



546 P.2d 530 (1976), even though enforcement of previously promulgated regulations had been preliminarily enjoined by a three judge Federal district court in Hjelle v Brooks, 377 F Supp. 430 (D. Alaska 1974). Each of these cases involved Seattle-based fishermen who participated in the fishery beyond the three-mile limit.

The insertion of the second sentence of section 306(a) into the FCMA is generally believed to have been an attempt engineered by the Washington congressional delegation to overrule Bundrant. This sentence provides:

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

As you know, this sentence has turned out to be ambiguous, because it is the Federal government, and not the states, that registers (in the usual sense of "documents") vessels the size of those participating in the fishery. Taking advantage of this ambiguity, Alaska has required all vessels landing king crab on its shores or otherwise coming into its territory incidentally to participation in the fishery, to "register" in Alaska. This "registration" is actually a conventional permitting system, rather than a system of vessel documentation. By requiring such registration, Alaska believes that it has effectively asserted its management authority over the activities of such vessels in the fishery conservation zone (FCZ) beyond its three-mile limit in a manner consistent with FCMA section 306(a). This belief is vigorously contested by Seattle fishermen like those involved in the Hjelle and Bundrant cases, but has generally enjoyed the support of the NMFS Alaska Region and the Council. The Alaska Supreme Court endorsed this position in its recent American Eagle decision.

There is a small, but growing, number of catcher/processor vessels that participate in the fishery. Because these vessels can process their catch at sea, they do not have to land it live in Alaska ports, or otherwise come within Alaska territory. As a result, they are able to avoid "registering" under Alaska law without fear of suffering sanctions that might be imposed by Alaska upon those landing king crab within its territory. Because the Alaska management system for the fishery does not apply to these catcher/processors, and because there is not yet a Federal management system to fill the vacuum, the fishery operations of these catcher/processors are, as a practical matter, unregulated.

The Seattle fishermen have argued strongly for the prompt adoption by the Council of an FMP for the fishery, and for the implementation of that FMP through regulations of the Assistant Administrator that would displace Alaska's regulations to the extent they apply to the fishery in the FCZ. A number of Council members, however, believe that continued

direct participation of the Board and ADF&G in management of the fishery in the FCZ would be desirable. They and the Council staff have asked that alternatives to the conventional approval and implementation of an FMP for the fishery that would allow such participation by Alaska in its management be analyzed.

The main alternatives that are under consideration are as follows:

- (1) Approval of a "framework" FMP without adoption by the Assistant Administrator of any implementing regulations, with implementation of the FMP left to Alaska through its registration and landing regulations.
- (2) Approval of a "framework" FMP with adoption by the Assistant Administrator of a regulation delegating authority for implementation of the FMP to the Board and ADF&G.
- (3) Joint adoption by the Council and the Board of a set of management standards and policies other than an FMP, with implementation of those standards and policies resting with the Board and ADF&G.

The feasibility under the FCMA of each of these alternatives for management of the king crab fishery will now be considered.

(1) Framework FMP Approved But Federal Implementing Regulations Not Adopted

It has been suggested that NOAA and the Council might ensure a continuing role for Alaska in the management of the fishery by developing and approving a "framework" FMP, but declining to promulgate regulations to implement that FMP under FCMA section 305. A "framework" FMP for this purpose is an FMP that does not prescribe specific fishery management measures in detail, but rather sets forth more general management goals and standards to be implemented through measures adopted by ordinary rule-making. Such a format would eliminate the need to amend the FMP every time it was desired to change a management measure. Under this proposal, ADF&G and the Board would continue to regulate participation in the fishery by vessels registered under the laws of Alaska subject to the management objectives and standards set forth in the FMP. There would be no Federal regime for management of the fishery other than Council and NMFS oversight of Alaska's regulatory activities to ensure that they complied with the FMP, and periodic review of the FMP itself to determine whether it was in need of amendment. The Assistant Administrator would retain authority to adopt Federal regulations overruling Alaska regulations that were found to be inconsistent with the FMP or with any amendment thereto.

The primary advantage perceived in this proposal is that it would forego the establishment of a new Federal king crab management regime which many believe would simply duplicate a management capability

currently possessed by Alaska, at least with respect to vessels registered in Alaska. Proponents of this alternative suggest the unlikelihood, due largely to budgetary constraints, that any Federal king crab management system could in the foreseeable future acquire the research, monitoring, and data-gathering capacity currently available to ADF&G and the Board in their management of the fishery. It is thus suggested that a Federal king crab management regime would largely be a bureaucratic overlay of Alaska's management system that would add little of substantive significance to the quality of management while imposing significant additional administrative burdens. Those making this suggestion find support for it in the current regulatory situations of the Tanner crab and Alaska salmon troll fisheries, and in the confusion that has surrounded development of a Bering Sea herring FMP.

A disadvantage of this alternative would be that it would leave unmanaged participation in the fishery by the catcher/processors based in Washington State that are not even arguably "registered" in Alaska due to their nondependence on Alaska shore-based facilities. This disadvantage could be ameliorated if Washington, in cooperation with NMFS, the Council, and Alaska, were to adopt its own king crab management regime to implement the FMP, covering vessels "registered" in Washington.

The viability of this proposal would, of course, depend upon continued adherence by NOAA to its liberal interpretation of the second sentence of FCMA section 306(a), under which each State is considered to have great latitude in determining which vessels are to be considered "registered" under its laws, provided that it has substantial relationships with those vessels.

The primary legal obstacle to adoption of this alternative for king crab management is presented by FCMA section 305(c) which provides, in part:

"The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan . . . if he finds that the plan or amendment is consistent with the national standards, the other provisions of the Act, and any other applicable law."

[Emphasis added.]

The use of the mandatory "shall" in this provision would seem on its face to require the Assistant Administrator to adopt implementing regulations for any approved FMP. In contrast with FCMA section 302(h)(1) discussed below, which contains similar mandatory language concerning Council preparation of FMP's, there is no other provision of the FCMA

that might qualify the language of section 305(c). Thus, the better view is probably that the Assistant Administrator must adopt regulations of some sort to implement an FMP which he has approved although, as will be discussed in connection with the next alternative, he probably has substantial leeway as to the exact content and nature of those regulations.

It could be that the "shall" of FCMA section 305(c) could be read in a nonmandatory way, despite its usual mandatory significance. Such a reading could be supported by the general disinclination of Congress, particularly over the past few years, to espouse unnecessary Federal regulation. A party challenging the nonadoption by the Assistant Administrator of a regulation he had specifically found to be unnecessary would at the very least be in a somewhat awkward position, although that party's chances of success would not be negligible. Therefore, the Council and NOAA may not at this time want to dismiss the pursuit of this first alternative, recognizing that it does entail a legal risk that does not accompany the two alternatives discussed below.

(2) Framework FMP Approved and Implementing Authority Delegated by Federal Regulation to State Agencies

The second alternative for management of the fishery would involve the adoption and approval by the Council and NOAA of a framework FMP, and the promulgation by the Assistant Administrator of an implementing regulation that would simply delegate authority for implementation of the FMP to ADF&G and the Board. This would have substantially the same practical advantages and disadvantages as the first alternative. As would be the case with that alternative, the regulation of catcher/processors not registered in Alaska could be accomplished through a similar delegation to Washington State management agencies.

The primary legal issue raised by this alternative is the extent to which the Assistant Administrator may subdelegate his authority under FCMA section 305 to implement an FMP to State agencies such as ADF&G and the Board. This authority was delegated to the Secretary of Commerce by Congress in enacting the FCMA, and was subdelegated by the Secretary to the NOAA Administrator, who further subdelegated it to the Assistant Administrator.

The law of subdelegation of regulatory authority appears to be quite confused, and the cases focus almost exclusively upon subdelegation by an agency head to subordinates within the agency. See, generally, T. H. Davis, *Administrative Law Treatise* (2d ed.) 216-23 (1978). Yet, the current approach of courts and agencies to subdelegation appears to be quite permissive. *Id.* at 218-20. The leading case on the subject appears

to be Fleming v Mohawk Wrecking and Lumber Company, 331 U.S. 111 (1947). There, the Court cited a provision of the Emergency Price Control Act which stated that the Price Administrator

"may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act."

The Court then stated:

"Such a rule-making power may itself be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld."

331 U.S. at 111.

In Mohawk, the Court departed sharply from the much more restrictive approach to subdelegation that it had adopted earlier in Cudahy Packing Company v Holland, 315 U.S. 357 (1942), in which it held that the Wage and Hour Administrator of the Department of Labor could not subdelegate his statutory authority to sign subpoena duces tecum. While the Court in Mohawk made a somewhat strained attempt to distinguish Cudahy, 331 U.S. at 120-21, it in fact appears to have adopted a generous approach to subdelegation similar to that espoused by Justice Douglas in his Cudahy dissent, 315 U.S. at 367-73, and Cudahy is no longer treated as viable precedent, Davis, *supra*, at 218. The Court reaffirmed this approach in Jay v Boyd, 351 U.S. 345 (1956). Concerning the provision of the Immigration and Nationality Act of 1952 which provided that the Attorney General "may, in his discretion" suspend the deportation of certain aliens, the Court stated:

"Petitioner does not suggest, nor can we conclude that Congress expected the Attorney General to exercise his discretion in suspension cases personally. There is no doubt but that the discretion was conferred upon him as an administrator in his capacity as such, and that under his rulemaking authority, as a matter of administrative convenience, he could delegate his authority to special inquiry officers with review by the Board of Immigration Appeals."

Id. at 351 n. 8.

In NLRB v Duval Jewelry Company of Miami, 357 U.S. 1 (1958), the Court drew a distinction between cases of the kind just discussed, which involve complete subdelegations of regulatory authority, and situations in which the delegator retains the right to make the final decision by way

of an appeal procedure, even though the initial decision is made by a delegate. Id. at 6-8. The Court seemed to indicate that subdelegations of the latter, partial type would be even more readily allowed than complete delegations. Id. at 8.

In United States v Giordano, 416 U.S. 505 (1974), the Court reiterated the liberal approach to subdelegation established in Mohawk, but held that the statute under consideration in the instant case specifically forbade the delegation of the function in question. Id. at 513-14.

In reviewing subdelegations of certain administrative functions by the Equal Employment Opportunity Commission under its authority to make procedural rules, two circuits have applied the liberal approach to subdelegation prescribed by the Supreme Court. EEOC v Raymond Metal Products Company, 530 F.2d 590 (4th Cir. 1976); EEOC v Laclede Gas Company, 530 F.2d 281 (8th Cir. 1976). In Raymond Metal, the Court placed some emphasis upon the fact that judicial review of the subdelegated administrative actions was available even though there was no express provision for administrative review of those actions. 530 F.2d at 594.

An apparent aberration in the generous approach taken by the Federal courts to subdelegation is presented by certain dicta in Relco, Incorporated v Consumer Product Safety Commission, 391 F. Supp. 841 (S.D. Texas 1975). In that case, a manufacturer challenged the issuance of preliminary adverse publicity concerning one of its products by the CPSC's Bureau of Compliance under a provision of the Consumer Product Safety Act. This function had been subdelegated by the Commission to the Bureau under a provision of the Act specifically authorizing the Commission to delegate any function or power other than the power to issue subpoenas. In considering the Plaintiff's claim that authority to issue the adverse publicity had been improperly subdelegated by the Commission to the Bureau, the Court stated:

" . . . [S]ome functions are so primary and so basic to the implementation of the statute as to be nondelegable. Functions constituting final agency action, such as administrative adjudications and rule making, must be made or ratified by the Commissioners and may not be delegated to subordinates under broad grants of authority . . . While intra-agency delegation is a necessity in carrying out some of its functions, such delegation cannot be excessive . . . "

391 F. Supp. at 845-46.

The Court cited absolutely no case authority for this statement, referring only to a passage in an earlier version of the Davis treatise which has since been replaced by the new sections cited above. If accepted, the court's statement would probably invalidate the delegation of FCMA authority from the Secretary of Commerce to NOAA, and it appears to be totally unsupported by any viable judicial precedent. Fortunately, the statement was plainly mere dictum: the court dismissed the complaint for lack of exhaustion of administrative remedies and the CPSC, having won the case, had no occasion to challenge the statement before a higher court. Relco has not been cited once in any other judicial decision since its release almost six years ago.

The cases discussed above deal with subdelegations within the Federal government. The subdelegation of king crab management authority that is under consideration would be from a Federal agency to a State agency. This raises the question whether subdelegations to entities outside the Federal government must be analyzed under principles substantially differing from those discussed above.

A decision of the District of Columbia circuit indicates that this is not so. In Tabor v Joint Board for Enrollment of Actuaries, 566 F.2d 705 (D.C. Cir. 1977), certain actuaries challenged regulations of a Federal agency established for their certification under which membership in a private actuarial association could substitute for the passing of a professional examination. The plaintiffs challenged this provision as an unlawful subdelegation of the Board's authority to a private party. The Court responded as follows:

"As a factual matter, the Board has not substantially delegated its responsibility to set and administer enrollment standards. Permitting association members to short-cut the regular certification process does not mean that the Board has delegated its control over that process. Each applicant can obtain certification through a process superintended by the Board in every respect. And there is no claim that the Board has set the pass rate for its exam at such a high level that, in practice, the private associations actually set the enrollment standards.

"In any event, appellants are incorrect in asserting that express statutory authority is necessarily required for delegation by an agency. [The court cited Mohawk, distinguishing it from Cudahy and Giordano on the ground that those

cases involved prohibitions by Congress on subdelegation.] Congress has evidenced no such intent here. In fact, Congress granted the Joint Board discretion to establish reasonable standards and qualifications. . . ' for certification of competence."

566 F.2d at 708 n. 5.

Thus, the court appears to have held that, even assuming that the Board had subdelegated its authority to the Association, such subdelegation was permissible under the cases discussed above.

United States v Matherson, 367 F. Supp. 779 (E.D.N.Y. 1973), involved the challenge of certain National Park Service regulations providing that a permit for use of a motor vehicle in the Fire Island National Seashore would be granted only if an adjacent municipality had already issued a permit. The court rejected the argument that this was an unlawful subdelegation of NPS authority.

"Both parties agree that the purpose of the [local ordinance and the challenged Federal regulation] is to prevent erosion on Fire Island. The local municipalities and the Superintendent of the National Seashore have endeavored to cooperate with each other to maintain the natural beauty of Fire Island. [Footnote omitted.] It was in furtherance of this spirit of cooperation that the Superintendent promulgated [the challenged regulation]. This section is in no way an abdication of the Superintendent's power to administer the National Seashore. Rather, the instant section merely exemplifies an effort by the Superintendent to facilitate the orderly prevention of erosion on the island. The Superintendent still makes the ultimate determination of whether to grant a vehicular permit to travel on National Seashore land . . . Moreover, the practicalities of the situation dictate that such a regulation be in existence. The local municipalities and the National Seashore are contiguous."

367 F. Supp. at 782.

It must, on the other hand, be noted that the court observed that the municipality "has absolutely no power to grant a vehicular permit for the National Seashore." It did not, however, indicate that its decision would have been different if such power had been subdelegated. In fact, the court cited approvingly Gauley Mountain Coal Company v Director, U.S. Bureau of Mines, 224 F.2d 887 (4th Cir. 1955), and Clark Distilling Company v Western Maryland Railroad Company, 242 U.S. 311 (1917), both involving congressional delegations to the States, and stated that these delegations were

"far more extensive than the local municipalities' delegated authority under the instant regulation. In those two cases, the state's classification was final and all that remained was to apply the federal regulation. In contrast, under [the Federal regulation challenged in Matherson] the Superintendent retains the ultimate decision-making power."

367 F. Supp. at 783.

The Matherson court's citation of Gauley and Clark Distilling is significant, because it indicates both that the court believed the same standards to apply to congressional and administrative delegations of Federal authority to non-Federal entities; and that the court would have tolerated an even greater degree of delegation to the municipalities in Matherson.

In Gauley, a Federal statute imposed limitations on the use of electrical equipment in any mine found to be "a gassy or gaseous mine pursuant to and in accordance with the law of the State in which it is located," the State determination as to gaseousness being nonreviewable by the responsible Federal agency. 224 F.2d at 888-89. The statute was challenged as an impermissible delegation of Federal authority to the State. The court responded as follows:

"There is no delegation by Congress of its own power to a state agency, but merely the acceptance by Congress of state action as the condition upon which its exercise of power is to become effective. Congress has done this in a number of other fields of the law. [Here, among other statutes, is cited the Assimilative Crimes Act, which extends the criminal law of each State and Territory to areas under Federal jurisdiction located there.] . . .

. . . .

"In the case at bar, the regulations prescribed by Congress with respect to gaseous mines became effective upon a determination by a state agency under state law. That determination is not made under the authority of Congress. Congress merely applies its regulation in aid of state regulation after the state has classified the mine as subject to regulation as a gaseous mine. In the light of the authorities cited, this is clearly not delegation of Congressional power to the states . . ."

Id. at 890-91.

Gauley is thus notable both for the conclusive effect of the State determination upon the operation of the Federal management regime and for the court's obvious discomfort with the idea that this was a "delegation" of Federal authority, despite the fact that it obviously was, as was recognized in Matherson. 367 F. Supp. at 783.

Clark Distilling, supra, cited in both Matherson and Gauley, involved a challenge to the Webb-Kenyon Act. This pre-Prohibition statute made unlawful the transportation into a State of liquor in violation of laws of that State which, it was conceded, would otherwise have been unconstitutional under the Commerce Clause. The Supreme Court stated:

"The argument as to delegation to the states rests upon a mere misconception. It is true the regulation which the Webb-Kenyon Act contains permits state prohibitions to apply to movements of liquor from one state into another, but the will which causes the prohibitions to be applicable is that of Congress, since the application of state prohibitions would cease the instant the act of Congress ceased to apply."

242 U.S. at 326.

Based upon these authorities, the better view would seem to be that there is no necessary legal impediment to the delegation by the Assistant Administrator to State agencies of authority to implement a PMP for the fishery, pursuant to his general rulemaking authority under FCMA section 305. This would be particularly true if express provision is made for timely review of the State management measures by the Council and NMFS. The review procedure, which it would be advisable to prescribe in the delegation, could include joint meetings of the Council and the Board before the Board's adoption of new regulations; a recommendation by the Council to NMFS (either the Assistant Administrator or the Regional Director) as to the compliance of the new regulations with the FMP; and a decision of the Assistant Administrator or Regional Director, based on the Council's decision, whether to adopt Federal regulations to supplement or supersede those of the State. Assuming that the "framework" format of the FMP worked as planned, amendments to the FMP would be rare, and actions of the Board and of NMFS would be almost entirely through normal notice-and-comment rulemaking.

(3) Joint Council/Board Policy Statement Adopted and State Management Continues Without an FMP

The third alternative to the conventional FCMA enforcement mechanism that is being considered for the fishery would be the adoption by the Council and the Board of a joint statement of management policies and

standards for the fishery that would not, however, constitute an FMP. The Board and ADF&G would agree to be bound by this statement in their own management of the fishery, but otherwise the current State management system would not be disturbed and no Federal management regime would be established.

It has been argued that adoption of this alternative is impermissible under the FCMA. This argument is based upon FCMA section 302(h) (1), which provides:

"Each Council shall, in accordance with the provisions of this Act -
 (1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority"

Read in isolation, this provision appears on its face to require the Council to prepare an FMP for every fishery off Alaska, including that for king crab, regardless of its views as to the necessity of an FMP. This interpretation is vigorously endorsed by the Seattle fishermen, and would undoubtedly form the basis for a legal challenge if the Council declined to adopt an FMP for the fishery.

Another provision of the FCMA, however, seems to indicate that the Council's obligation to prepare an FMP for the fishery is somewhat less stringent than an isolated reading of section 302(h)(1) would suggest. FCMA section 304(c)(1)(A) provides:

"The Secretary may prepare a fishery management plan with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if -

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

[Emphasis added.]

Under this remedial provision, the Assistant Administrator is not even authorized, much less required, to develop an FMP in default of Council action unless the fishery "requires conservation and management." Since

section 304(c) (1) (A) prescribes the administrative remedy for violation by the Council of section 302(h) (1), and since no such remedy was authorized by Congress when the fishery is not one that "requires conservation and management," it would be reasonable to interpret the Council's underlying obligation so as not to require the preparation of an FMP for a fishery not requiring "conservation and management." Such an interpretation is bolstered by common sense and by the current offensive against unnecessary Federal regulation.

Assuming that this latter interpretation is adopted, the question arises whether the fishery for king crab is one that "requires conservation and management" within the meaning of the FCMA. If this phrase is interpreted in the absolute sense, with no consideration of the existing management regime, then the fishery would generally be conceded to require "conservation and management," since the capacity of the various participants far exceeds the amount of king crab that can be taken without reducing the reproductive capacity of the resource. If, however, assessment of the need for Federal "conservation and management" under sections 302(h) (1) and 304(c) (1) (A) can take into account the efficacy of existing non-Federal management regimes, then the fishery for king crab may well be one that the Council and the Assistant Administrator could reasonably find not to require such "conservation and management." Either interpretation of this phrase would seem to be reasonable, given the apparent absence of legislative history on the subject, and the Council and the Assistant Administrator could therefore, in the exercise of their administrative discretion, select the interpretation they desired. Courts would be required to defer to this interpretation by the Council and NMFS of the statute they are charged to administer. Udall v Tallman, 380 U.S. 1, 16 (1965). As you are aware, some Federal courts tend to honor this principle in the breach, and there is no guarantee that they would be inclined to follow it in this instance. Despite the presence of some legal risk, however, I am persuaded that the Council could, in accordance with the FCMA, find that the current king crab management regime of the State of Alaska effectively protects the king crab resource, and that the fishery is not, therefore, one that "requires conservation and management."

If it adopted this position, the Council would be well advised to compile a record, including comments and hearing summaries on the draft FMP and DEIS and background information on the provisions of its joint statement with the Board. Following compilation and review of this record, and finalization of the Council/Board statement, the Council would adopt a formal finding based on the record that the fishery is not one that "requires conservation and management," as long as the Board adheres to the statement in its own management of the fishery. It might

be advisable to include in the finding a discussion of the impact of catcher/processors that are beyond Alaska's jurisdiction. The Assistant Administrator would then review the Council's finding in light of the record, perhaps accepting public comments on it, and, if he concurred in the finding, issue a formal notice to that effect. The Council would periodically review the Board's management of the fishery and either renew its finding or, if it found that the joint statement was not being complied with or needed an amendment that the Board would not agree to, either undertake the preparation of an FMP for the fishery or request the Assistant Administrator to do so.

CONCLUSION

Thus, there do not appear to be serious legal impediments to adoption of at least the latter two alternatives discussed above by the Council and NMFS.

I will be happy to respond to any questions or comments on this conclusion, either at the meeting or afterward, and will keep the Council staff informed on GCF's response to it.

cc: GC - Jim Brennan
F/AKR12 - Jim Brooks
ADF&G - Guy Thornburgh
ADF&G - Fred Gaffney

DRAFT

JOINT STATEMENT OF PRINCIPLES
BETWEEN

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC)
ANCHORAGE, ALASKA

and

ALASKA BOARD OF FISHERIES (BOF)
JUNEAU, ALASKA

ON THE

MANAGEMENT OF DOMESTIC KING CRAB FISHERIES
IN THE BERING SEA AND ALEUTIANS

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

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

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

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

I. Applicable Fisheries

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

II. NPFMC and BOF shall undertake the following activities:

1. NPFMC and BOF shall develop a framework to govern management of the fishery, prescribing objectives, standards, and measures found to be necessary for the fishery's effective management. These objectives, standards, and measures shall be consistent with the national standards of the Magnuson Act and with the laws of the State of Alaska; and shall not discriminate between residents and non-residents of the State of Alaska.
2. Following provisional adoption by BOF of the framework developed under paragraph 1, NPFMC shall make the provisional framework together with other materials describing and evaluating management of the fishery by the State of Alaska, readily available to all persons interested in the fishery for a period of at least forty-five (45) days. During this period, all such persons shall be afforded the opportunity to submit to NPFMC written and oral comments as to whether the State of Alaska has provided and will provide effective conservation and management of the fishery consistent with the policies, purposes, and national standards of the Magnuson Act. NPFMC shall hold public hearings on this issue at places and times that are likely to facilitate attendance by such persons and their representatives.
3. Following a determination by NPFMC, if warranted in light of the comments received, that the fishery does not require conservation and management through the approval and implementation of a fishery management plan under the Magnuson Act; and following final adoption by BOF of the framework developed under paragraph 1, as modified in light of comments received by NPFMC and BOF and consultations between those two bodies, the framework shall be implemented through regulations adopted by BOF in accordance with the laws of the State of Alaska, which shall be consistent with the objectives, standards, and measures prescribed in the framework. Before taking final action on any regulation governing the fishery, BOF shall make readily available in written form to all persons interested in the fishery for a period of at least thirty (30) days, the reports and data received by BOF upon which the proposed regulation is based; shall afford all such persons the opportunity to submit written and oral comments to BOF on the proposed regulation during that period; and shall, upon the request of NPFMC, meet with NPFMC or its representatives to discuss the proposed regulation. Before any BOF regulation governing the fishery goes into effect, BOF shall issue a written statement explaining the basis for the regulation. The preceding provisions of this paragraph shall not apply to emergency regulations.

4. NPFMC and BOF shall meet jointly at least once every calendar year to consider management of the fishery and discuss the need for amendment of the framework or any regulations governing the fishery. NPFMC and BOF or their designated representatives shall also meet jointly to consider management of the fishery at the request of either NPFMC or BOF. All persons and agencies interested in the fishery shall have the opportunity to submit written and oral comments and reports on management of the fishery to NPFMC and BOF at these meetings. In preparation for the mandatory annual joint meeting provided for in the first sentence of this paragraph, representatives of NPFMC and BOF shall hold a public hearing in the State of Washington at which all persons and agencies interested in the fishery shall be afforded the same opportunity to comment on management of the fishery that they would have at the meeting itself.
5. The Alaska Department of Fish and Game (ADF&G) shall have primary responsibility for developing the information upon which regulations governing the fishery are to be based, and for implementing these regulations through monitoring of the fishery and development of in-season management measures. NPFMC and BOF shall encourage ADF&G, in carrying out this responsibility, to consult actively with the National Marine Fisheries Service and the fishery management agencies of other states, in order to prevent duplication of research and management effort and to make optimum use of the resources available for management of the fishery.
6. NPFMC and BOF shall resolve conflicts on the framework and implementing regulations through all appropriate means.

D R A F T

ALASKA BOARD OF FISHERIES

BERING SEA/ALEUTIAN ISLAND
KING CRAB
FISHERY MANAGEMENT FRAMEWORK

April 1, 1981

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1.0 AREAS AND FISHERIES

This management framework presently applies only to the king crab (family Lithodidae) fisheries in the Bering Sea and Aleutian Islands (Figure 1). These fisheries are described in the Alaska Shellfish Regulations as the Bering Sea, Bristol Bay, Adak, and Dutch Harbor "statistical areas" (Areas Q, T, R, and O, see Figure 1).

These areas describe geographically segregated stocks capable of being managed as independent units. Within each statistical area manageable portions of the stocks are further divided into fishing districts and sections. For a complete description of the statistical areas, fishing districts, and sections, refer to the commercial section of the Alaska Shellfish Regulations.

2.0 MANAGEMENT OBJECTIVES

The management regime for the king crab fisheries is intended to achieve the following objectives. These objectives are not mutually exclusive and management measures may be designed to accomplish several objectives.

1. Achieve Reproductive Requirements for Individual King Crab Stocks.

The cornerstone of king crab fishery management is optimization of the reproductive potential of individual king crab stocks. At low population levels or in situations when there is insufficient knowledge of spawner-recruitment relationships to define spawning requirements, it is prudent to strive to ensure that a sufficient number of males remains on the grounds to maximize reproductive potential. At high abundance levels full egg clutch development in all female crab is unnecessary. Additional harvest of male crab or allowing a harvest of female crab is under these circumstances consistent with the goal of achieving the reproductive requirement of individual stocks.

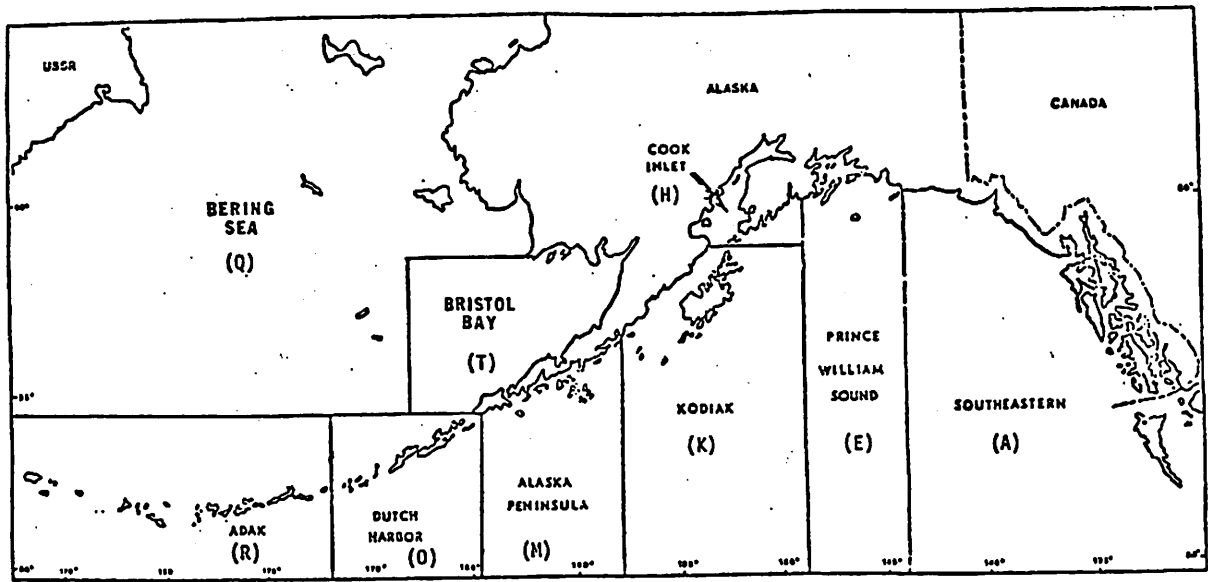


Figure 1. Alaska King Crab Statistical Areas

2. Provide for Subsistence uses of King Crab.

If king crab are an important food source in some areas, management measures should provide for traditional and customary uses. These uses will be given a priority if it is necessary to restrict the taking of king crab to assure the maintenance of the sustained yield of the stock.

3. Optimize the Net Value of the Fishery

The optimal harvestable surplus for the Bering Sea/Aleutian Island king crab fishery is not necessarily the maximum physical yield. Social, economic or ecological factors may change the yield. In particular, annual harvests that are relatively stable between years (i.e., where extreme fluctuations in annual harvests do not occur) are a goal because adverse socioeconomic consequences are associated with "boom and bust" crab fisheries. Management strategies should attempt to moderate peaks and troughs (which are a function of year class strength) with due regard for cost/benefit considerations.

Unless consideration is necessary for conservation or social objectives, mangement measures should not impose additional burdens on industry; cost effective harvesting and processing techniques should not be restricted; and production/marketing standards should be accommodated.

As an example, management strategies should avoid unnecessary vessel use. As another example, since crab recovery rates (the ratio of recoverable meat to total body weight) increase dramatically during the period of rapid growth following molting, a delayed season opening can act to increase both the volume and value of the catch and final product, benefiting both fishermen and processors. However, delayed season openings could also increase harvesting costs due to adverse weather conditions.

4. Minimize Adverse Socioeconomic Impacts by Protecting Community and Industrial Investments

Because the Bering Sea/Aleutian Island king crab fishery is an existing, historic fishery with established Alaska and non-Alaska industrial systems (harvesting and processing) and community infrastructures depending on the fishery, mechanisms may be necessary to protect investments that have been made.

These considerations are not solely economic but also social in nature. Changes made in the management of the fishery need to be evaluated in light of these previously made investments.

Examples of management measures that have been used to accomplish this objective are exclusive registration, "fair starts," and the setting of seasons in relation to other fisheries.

5. Minimize Adverse Interactions Among Fisheries

Modern management practices dictate that the management of a particular fishery consider the interaction with other fisheries. For example, interference of pot gear with trawl fisheries.

6. Optimize the Cost Effectiveness of Management and Enforcement

Fishery management should seek to bring management and enforcement costs to within reasonable limits relative to the value of the fishery.

3.0 MANAGEMENT MEASURES

A variety of management measures can be used to achieve the objectives defined for this fishery. While some of them can be used to realize either one or several objectives, it is essential that only those mechanisms deemed necessary be adopted.

3.1 Determination of Optimum Yield

Two numerical values are addressed in this section. One is the Acceptable Biological Catch (ABC), which is based on the biological status of the stocks. The other is the Optimum Yield (OY), which represents a modification of the ABC for social, economic, or ecological factors.

ABC

The ABC, in so far as possible, should be based on the following estimates:

1. stock abundance and distribution by sex and size class;
2. natural mortality rates by sex and size class;
3. fishing mortality rates from previous years by size class;
4. growth rates by sex and size class;
5. recruitment into the fishery;
6. critical size necessary for reproductive needs;
7. reproductive success given a specific population size, sex ratio, and distribution of spawning stocks; and
8. environmental and ecological effects.

The ABC should maintain recruitment to the fishable stock at the highest possible level. Maintenance of this level of recruitment for king crab is achieved by perpetuating a minimum required spawning stock of fertilized females. When the stock is below the determined minimum, the fishery should be restricted to maintain full female fertilization. When the stock is above this minimum, higher exploitation or lower size limits on males may be permitted.

The amount of information available to determine the ABC varies according to statistical areas. In particular, the Adak, Bering Sea and Dutch Harbor areas have less information than Bristol Bay. As a result the procedure for ABC in Bristol Bay is different than the other areas and will be addressed separately.

Bristol Bay

The procedure for determining ABC for king crab in Bristol Bay is as follows:

1. Establish the minimum required female spawning stock.

This is done by an analysis of the stock-recruitment relationship, based on abundance estimates from resource assessment surveys. This is an ongoing analysis which builds on the use of additional data as each survey is completed.

The Bristol Bay area presently has the best data base and is experiencing high stock levels. A study by Reeves and Marasco (1980) which simulated the spawner-recruitment relationship, the copulation coefficient and the size of the Bristol Bay fishery indicates that because of high stock levels there is currently an excess reproductive potential. Further, Reeves (1981) has indicated that 40 million copulated females is a reasonable estimate of the minimum number necessary to sustain the population based on current spawner-recruit information. Therefore, at the high population levels now apparent in Bristol Bay, a greater portion of males is surplus to reproduction and is available as ABC for the fishery. The ABC is estimated using this information combined with current survey estimates of abundance. A detailed example is provided by Reeves (1981).

2. ABC is set equal to the maximum catch (i.e., a given minimum size limit/exploitation rate combination applied to survey estimates of abundance) which still maintains the minimum required spawning stock.

Expected catches are calculated from survey abundance estimates by minimum size limit and exploitation rate. Acceptable catches are those which do not lower the expected spawning population of females below a minimum required. Such a reduction in spawning population operates through a presumed reduction in percent copulation. The highest of these catches is selected as the ABC.

Adak, Bering Sea and Dutch Harbor

In these areas data are insufficient for determining the minimum required spawning stock, therefore, ABC will be set as the catch corresponding to an exploitation rate of .4.

OY

The Optimum Yield for the Bering Sea/Aleutian Island king crab fishery is the pre-season indication of the allowable harvest. The realized harvest may differ from the earlier specification of OY due to information gained during the season (see Section 3.9, In-season Adjustment of Time and Area).

The OY will equal the ABC unless there is social, economic or ecological rationale for harvesting more or less than the ABC in order to achieve management objectives. Agency reports, public comments, analyses of impacts on markets, the processing and harvesting sectors and the community infrastructures, etc. will serve as the basis of modifying ABC into OY.

3.2 Fishing Seasons

Fishing seasons have historically been used in the king crab fishery to protect crab during the mating, molting, and growing periods of their life cycle. Because harvest levels are usually taken in two months or less there is opportunity to look beyond biological considerations in setting the date of the season opening.

In addition to the above concerns, several additional factors will be weighed in determining an appropriate season. One factor to be considered is the recovery rate (the ratio of recoverable meat to total body weight). Because the recovery rate increases dramatically during the period of rapid growth following molting, a delayed opening will generally act to increase both the volume and value of the catch and final product.

A second factor to be weighed is weather conditions. These generally worsen as the year progresses; consequently a late season opening is likely to

translate into more difficult fishing conditions. This will particularly disadvantage operators of smaller vessels.

A third factor is the timing of the king crab fishery relative to other fisheries, particularly the salmon fisheries. If the season opening for king crab occurs before the salmon fisheries are over, this will create difficulties for vessels and processors that normally participate in both fisheries. Conversely, a lengthy period of time between the two fisheries will force vessels and processors to lie idle and may create additional start up costs.

A fourth factor is the timing of the season openings for individual areas relative to one another. Most of the major king crab fisheries now open simultaneously. This distributes fishing effort at the start of the season, helps prevent gear saturation problems, and allows greater participation by local fleets.

The season opening should reflect a balance of attitudes within the industry with respect to the several factors described above.

3.3 Catch Restrictions Based on Sex

Common to nearly all crab fisheries is the restriction of taking only male crab. This restriction is assumed to contribute to maximum reproductive potential. The data base to support or reject an extensive harvest of female king crab is poor. Reeves and Marasco (1980) and Reeves (1981) indicate that there are probably surplus female crab which can be taken from the high stock levels now present in the Bristol Bay. However, the accumulative effects of female harvest and the subsequent environmental impacts are not demonstrable at this time and may never be without actually harvesting the female population.

The potential harvest of female crab has not been an issue. Management philosophies endorse a limited fishery for females in years of high abundance; however, industry has shown little interest. Females are considerably smaller than males of the same age and the proportion of recoverable meat is much less than that of males.

At the request of industry, the feasibility of providing a limited harvest of female crab will be determined.

3.4 Exclusive Registration Areas

The designation of registration areas as exclusive or non-exclusive has been debated for years. Exclusive registration areas encompass well developed historical fisheries. Non-exclusive registration areas are generally areas where king crab fisheries are relatively underutilized, unstable or marginal. The socioeconomic impact upon local communities within an area has been a major consideration as to whether a registration area warrants exclusive or non-exclusive status.

In determining the need for designating a registration area as exclusive or non-exclusive, consideration will be given to:

1. the desire by the public to protect industrial and community investments;
2. the ability to properly manage the fishery;
3. providing fleets a reasonable opportunity to participate in the fishery;
4. promoting the most efficient utilization of vessels and gear; and
5. availability of similar management measures which would limit overall fishing effort.

3.5 Gear Placement

Determination of the need for regulations affecting gear placement or staging, (i.e., allowing fishing gear to be placed on the grounds prior to fishing and/or remain on the grounds after the season closure) will result from examining:

1. the biological impacts on target and non-target species;
2. enforcement problems and costs borne by the public versus by the industry; and

3. possible gear conflicts.

3.6 Gear Storage

Between fishing seasons, king crab gear can be stored on land or at sea. The expense of storage on land is of course greater than at sea, however, loss of gear is significantly reduced with on land storage. Under current State regulations, gear must be removed from the fishing grounds after the fishing season is over and stored on land in shallow waters (less than 25 fathoms), or in specific high seas areas when there is insufficient shallow water storage. These designated storage areas have historically been areas of low crab abundance. Gear must be stored in a non-fishing condition; bait and bait containers removed and doors locked open.

Regulations which describe the means by which king crab fishing gear may be stored during the closed fishing season will continue to be developed. These regulations may range from random (at sea) storage to limited designated (at sea) storage areas, or complete removal of gear from the sea and will be based on analyses of the following information:

1. the biological impacts of storing gear at sea;
2. the enforcement costs of determining whether fishing gear stored at sea is in a non-fishing condition;
3. the costs borne by the fleet to store gear;
4. availability of on land or at sea storage areas; and
5. possible gear conflicts.

3.7 Vessel Tank Inspection

Vessel tank (e.g., live hold) inspections are required under current State regulations to meet the legal requirements for the State's "landing laws" (see Appendix 5.2). In order to pass inspection, the vessel must have no crab aboard. Generally, the tank inspection is performed by Department personnel during a 2-5 day period preceding the season opening depending on the statistical area.

In determining the need for vessel tank inspection regulations, consideration will be given to:

1. enforcement requirements;
2. documentation of commercial harvest location;
3. the fleet's ability to move freely from the fishing grounds to processing locations;
4. the time necessary to transport gear from the storage areas to the fishing grounds;
5. the increase fuel useage required by the fleet to effect this regulation; and
6. the desire by the fleet to insure a fair and equitable season start among the various participants.

3.8 Limited Entry

At present, a limited entry program for vessels fishing the king crab fishery in the Bering Sea/Aleutian Islands area will not be implemented.

3.9 In-season Adjustment of Time and Area

Optimum yields are based upon projections of the status of the stocks, economic and other conditions several months in advance of the actual conduct of the fishery and may be found to be in error in light of unanticipated adverse or favorable stock conditions which are revealed in-season. Under such circumstances it is appropriate to take immediate action by issuing emergency orders adjusting time and/or area restrictions. Therefore, this framework provides that seasons and area shall be subject to in-season adjustment based upon one or more of the following factors:

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.

4.0 ENFORCEMENT AND REPORTING REQUIREMENTS

Enforcement procedures are necessary for:

1. surveillance of fishing vessels to assure compliance with the registration and permitting regulations as well as area and season openings and closures;
2. surveillance of landing to assure compliance with size, sex, and species regulations;
3. surveillance of fishing gear to assure compliance with gear restrictions and gear storage areas; and
4. compliance with reporting requirements.

Reporting requirements.

(a) The operator of any fishing vessel participating in this fishery whose port of landing is in the United States is responsible for the submission of an accurately completed State of Alaska fish ticket for each sale or delivery of any king crab covered by the management regime.

(b) At the election of the vessel operator, the fish ticket shall be either: (1) submitted by the vessel operator directly to the ADF&G within one week after such king crab are sold or delivered; or (2) prepared, at the request of the operator, by the purchaser (i.e., any person who received king crab for a commercial purpose from a fishing vessel subject to this management regime) and submitted by the purchaser to the ADF&G within one week after such king crab are received by the purchaser.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (b)(2)) shall also accurately state on each such fish ticket: (1) vessel name; (2) date of delivery; (3) type of gear used; (4) total number of pot lifts; (5) statistical reporting areas of catch; and (6) for each species, the number of pounds landed and the deadloss.

(d) The operator of any fishing vessel operating in this fishery whose port of landing is outside the State of Alaska shall submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket and in section (c), to the ADF&G within one week after the date of each sale or delivery of any king crab.