


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: April 8, 1996

SUBJECT: Staff Tasking

ESTIMATED TIME

1 HOUR

Item D-2(a) is an updated summary of the Council's current plan and regulatory amendments and other initiatives. One issue which is still somewhat in limbo, pending resolution of Council funding via the Federal FY 96 budget, is the halibut sport (charter) analysis. We intend to issue a Request for Proposals (RFP) as soon as we receive positive news on the budget resolution, and have therefore provided a draft RFP to the SSC for review at this meeting, for which they may have recommendations to the Council. The scope of this study has the potential to be quite large given the current suite of alternatives, perhaps beyond what can be supported by Council funding. I suggest that we take some time during this discussion to address that issue, and if possible, narrow the scope of that study.

Item D-2(b) contains letters recently received on issues which are not on the agenda for this meeting. Included is a request from the Peninsula Marketing Association that the Council reconsider its action on the GOA pollock trimester allocations, as that action pertains to the Western Gulf, or to consider initiating measures to mitigate the potential impacts of that action. Secondly, there is a request that the Council revisit the moratorium as it relates to qualification, or lack thereof, of vessels which made GOA crab landings.

STATUS OF COUNCIL TASKING

April 15, 1996

<u>ACTION</u>	<u>STATUS</u>	<u>TASKING</u>
REPORTS:		
1 Halibut Charter Management	Initial Review of RFP for analysis in April 1996 Initial analysis in Feb 1997	Council
2 Reg. Consolidation and Repeal of Salmon FMP	Review in April 1996	Region/Council/State
3 Crab Bycatch in GOA	Report in April 1996	Region
4 Review PR for License Limitation/CDQ Program	Report in April 1996	Region/Council/State
5 Sablefish/Halibut IFQ Fisheries Analysis	Preliminary report in April 1996. Full report in June 96	State/RAM Division
6 Magnuson Act Reauthorization	Report in April 1996	Council
7 Modified Observer Program	Report/Action in April 1996	Region/Council/OOC
8 Individual Bycatch Quotas (IBQs)	Report in June 1996	Center/Council/Region
9 State management of groundfish	Report in April 1996	ADF&G
10 Crab Rebuilding Committee	Report in April 1996	Council
REGULATORY AMENDMENTS:		
1 Seamount Restrictions	Proposed Rule in preparation	Region
2 AI extended sablefish season	Proposed Rule in preparation	Council/Region
3 Mesh Size Reg. Amendment	Proposed Rule pending	Council/Region
4 GOA Pollock Trimester allocations	PR on March 12 Comments due by April 22	Region/Council
5 Pollock 'B' Season delay	Analysis in preparation Decision in April 1996	Council

<u>ACTION</u>	<u>STATUS</u>	<u>TASKING</u>
6 'C' Season for fixed gear cod	Developing Proposed Rule	Region
7 Directed Fishing Standards adjustments	Initiated in December 1995 In preparation.	Region
PLAN AMENDMENTS:		
1 Moratorium	Final Rule on August 10 Effective January 1, 1996	Council/Region
2a Halibut/Sablefish IFQ Buydown	PR Pending	Council/Region
2b Halibut/Sablefish IFQ Sweep-up	Final Review in April 1996	Council/Region
2c BSAI Halibut Ownership Caps	Initial Review in April 1996	Council
2d Longline pots for BSAI sablefish	Initial Review in April 1996	Council
3 Salmon Retention/Delivery	EFP extended through 1996 pollock 'A' season. Submitted to SOC on April 4	Region
4 Chinook Salmon /Bycatch Closure Areas (Am 21b)	SOC approved Nov 20, 1995 Effective January 1, 1996	Region
5 Comp. Rationalization Plan (a) License Limitation (b) IFQ Program for BSAI pollock (c) IBQ/VBA program	(a) PR in preparation (b) Discuss in June 1996 (c) Discuss in June 1996	Council
6 Scallop FMP/Amendment 1	FMP Final on Aug 29, 1995 Am 1 forwarded to SOC Review	Region
7 Total Weight Measurement in Groundfish Fisheries	Advance Notice of Proposed Rulemaking on Feb 20. Comment period ended March 21.	Region
8 CDQ Compensation exemption & one-time transfer (32/36)	Final Rule on Jan 24 Effective Feb 23	Council/Region
9 Allow freezing of non-IFQ species/prohibit halibut catcher QS use on FLs	Proposed Rule on March 20 Comments until May 14	Council/Region

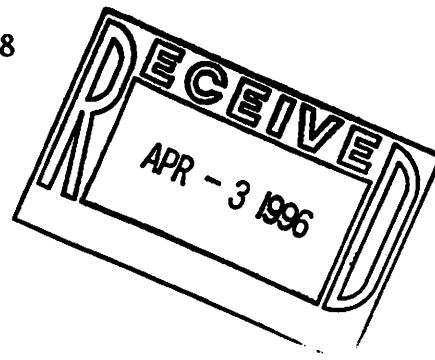
	<u>ACTION</u>	<u>STATUS</u>	<u>TASKING</u>
10	Bristol Bay Red King Crab Trawl Closure Area	In place for 1996. Initial review of permanent action in April 1996	Council/ADFG
11	Distribute halibut PSC savings	On hold pending other actions.	Council
12	Demersal Shelf Rockfish License Limitation Program	Discuss in April 1996	ADFG
13	Amend Overfishing Definitions	Initial review April 1996	Center/Council/Region
14	Forage Fish Prohibition	Initial review in June 1996	Region
15	Amend POP Rebuilding Plan	Final review in Dec 1995 PR in preparation	Council/Region
16	Crab PSC Cap Analysis	Initial review in April 1996	Council/ADFG/Center
17	Northeast Bristol Bay Closure	Initial review in April 1996	Council/ADFG/Region
18	BSAI cod gear allocations	Initial review in April 1996	Council
19	Halibut Area 4 Catch Sharing Plan	Final Rule March 20 Effective March 15	Council/IPHC/Region
20	Improved Retention/Utilization	Report in April 1996 Analysis in June 1996	Region/Council/Center
21	Groundfish Plan Update	In progress. Initial review in late 1996	Council/Region
22	Ban Night Trawling for Cod	Report in April 1996	Council/Region

OTHER ACTIONS:

1	April 24, 1994 Scallop Control Date	Published on June 15, 1994	Region
2	Halibut Charter Control Date	Never published in F.R.	Region
3	Skipper License Program	On hold pending other priorities	Council/Region
4	Review Experimental Fishing Permit Requests	Discuss in April 1996	Region/Council/State
5	Refund Research Plan fees	Interim Final Rule on Mar 20. Comments by April 29.	Region

PENINSULA MARKETING ASSOCIATION

P.O. BOX 248
SAND POINT, ALASKA 99661
PH(907)383-3600 FAX(907)383-5618



March 27, 1996

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501

Dear Mr. Lauber:

Enclosed are two proposals that we would like to submit for the Council's consideration at the upcoming meeting in Anchorage. These proposals are intended to address some of the problems that were created by the Council's recent decision to set the third trimester season date for Western Gulf pollock at October 1st. This regulatory decision is going to result in an increase in the number of larger vessels that will be finished with their seasons in the Bering Sea and Central Gulf districts. With this increased effort, the quota will be harvested in an unmanageably short amount of time.

This decision to set the October 1st season date was very unexpected considering the past analysis and Council discussions to date. As you know, we have long been supportive of the trimester concept for pollock in the Gulf of Alaska. We feel that your decision to deal with our area differently was allocative and politically motivated and we urge you to please reconsider your decision. The impact to this area's fishermen and to the resource need to be reviewed and we need to be provided an adequate opportunity to respond to this change.

Sincerely,

A handwritten signature in cursive script that reads 'Melanie Gundersen'.

Melanie Gundersen,
President

enclosures

**GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL**

Name of Proposer: Peninsula Marketing Association
Address: P.O. Box 248
Sand Point, Alaska 99661
Telephone: (907) 383-3600

Fishery Management Plan: GULF OF ALASKA POLLOCK

Brief Statement of Proposal: Restrict the size of Pelagic Trawl gear in the Western Gulf. The foot ropes on Pelagic Trawl gear should not exceed 280 feet.

Objective of Proposal: The License Limitation qualification criteria and season date timing have resulted in an increase in the number of larger vessels participating in the Western Gulf. The nets of the larger vessels are the size of three football fields which allow them to make larger tows, often plugging the canneries and depleting the quota much too quickly. Restricting gear size would allow a steady flow of product to the processors and allow equal access to the resource. It would slow down the harvests of what have been, and are likely to remain, relatively small TAC's for pollock. Thus, the National Marine Fisheries Service would be better able to account for harvests in season and provide for season closures in a timely manner without dramatically exceeding or under-cutting the trimester apportionments.

Need and Justification for Council Action: Only the Council has the authority to manage and regulate this fishery.

Foreseeable Impacts of Proposal: The National Marine Fisheries Service will be better able to manage this fishery, despite the increased effort that has been created by recent regulatory changes. Also to benefit are the fishermen and families of the coastal communities of the area that depend upon fishing as their sole source of income.

Are there Alternative Solutions: Yes. A trip limit of 200,000 pounds for all vessels fishing pollock in the Western Gulf.

Supportive Data & Other Information: The local community fishermen who participate in this fishery, and who have testified before this council.

Signature:

Melanie Anderson,
President

**GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL**

Name of Proposer: Peninsula Marketing Association
Address: P.O. Box 248
Sand Point, Alaska 99661

Telephone: (907) 383-3600

Fishery Management Plan: GULF OF ALASKA POLLOCK

Brief Statement of Proposal: Establish a trip limit of 200,000 pounds for all vessels fishing pollock in the Western Gulf.

Objective of Proposal: The License Limitation qualification criteria and season date timing have resulted in an increase in the number of larger vessels participating in the Western Gulf. The nets of the larger vessels are the size of three football fields which allow them to make larger tows, often plugging the canneries and depleting the quota much too quickly. Establishing a trip limit of 200,000 pounds for all vessels would allow a steady flow of product to the processors and allow equal access to the resource. It would slow down the harvests of what have been, and are likely to remain, relatively small TAC's for pollock. Thus, the National Marine Fisheries Service would be better able to account for harvests inseason and provide for season closures in a timely manner without dramatically exceeding or under-cutting the trimester apportionments.

Need and Justification for Council Action: Only the Council has the authority to manage and regulate this fishery.

Foreseeable Impacts of Proposal: The National Marine Fisheries Service will be better able to manage this fishery, despite the increased effort that has been created by recent regulatory changes. Also to benefit are the fishermen and families of the coastal communities of the area that depend upon fishing as their sole source of income.

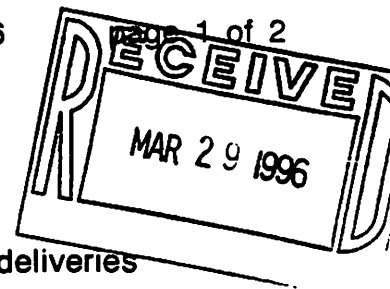
Are there Alternative Solutions: Yes. Restriction of the foot ropes on Pelagic Trawl gear, not to exceed 280 feet.

Supportive Data & Other Information: The local community fishermen who participate in this fishery, and who have testified before this council.

Signature:

Pauline Henderson,
President

3/27/96



Richard Lauber, Chairman
North Pacific Fisheries Management Council

re: moratorium GOA groundfish with pots from GOA crab deliveries

Dear Sir,

A quirk in the moratorium has arisen which I believe is an oversight or unintended consequence of the drawn out approval and reconstruction of the 'Moratorium'. The cross over provisions of the moratorium allow vessels that delivered crab to qualify to fish for moratorium groundfish in the GOA with pots but only if they fished the BS/AI.

Until 1986 tanner crab in both the BS/AI and GOA were managed under an FMP that was ineffective and was repealed. A new FMP was constructed in which the State of Alaska cooperatively manages the stock but this FMP only applied to the greater value BS/AI fisheries. The GOA stocks are also managed by the same State management but on an informal cooperative basis. The apparent reason for the BS/AI FMP was to be sure that the State did not pass restrictions specifically to favor Alaskan vessels, a situation that was of little consequence in the smaller GOA fisheries, and to remove any possible challenge of the State's authority to manage crab in the EEZ. (See enclosed Council 7 page historical analysis of the King and Tanner crab fisheries, and NOAA GCAK Pat Travers to NPFMC Jan. 31, 1986 on Suspending the Alaska Tanner Crab FMP)

Since there is no formal FMP, the GOA crab fisheries were not subject to the moratorium. However, not being subject to the moratorium now means that GOA crab vessels do not qualify for the pot fishing qualification whereas the BS/AI vessels do qualify. I have found no person in the council family that indicates that this was the discussed intention.

A justification for the pot crossover provision is that both federal and State managers recognize that all crab fishermen retain their groundfish and use it for hanging bait in their fishery operation. The 'letter of the regulations' is that

fishermen should estimate that amount of bait and make out a fish ticket for that groundfish. The managers and enforcement people have in the past considered this omission not significant and have not made any major effort to inform fishermen or enforce the fish ticket reporting of these groundfish in light of customary and usual practice (and fishermen appreciate the reasonableness of managers in not forcing additional paperwork of no significance). However, it now turns out that if GOA crab fishermen were aware and made out that required fish ticket they would have fully qualified for the groundfish moratorium.

This request that is that the Council recognize this glitch in the system and take the necessary steps to correct the problem. There are several possible ways to accomplish this and I hope you will request NOAA GC guidance as to the legal appropriateness. The least intrusive fix might be a 'Sense of the Council' allowing appropriately dated GOA crab fish tickets to qualify for "moratorium groundfish with pots" in any appeal of moratorium qualification. Or, the Council could simply recognize retroactive fish tickets based on the customary and usual landing and use of groundfish during those fisheries and allow groundfish moratorium qualification. Depending on NOAA GC, the amendment process might have to be used but the inequities caused by allowing BS/AI crab fishermen and denying local GOA crab fishermen to participate in the GOA groundfish pot fishery is a large enough issue to warrant even that measure.

Thank you for your consideration in this matter.

Sincerely,



Paul K. Seaton

58360 Bruce Drive

Homer, Alaska 99603

Ph. & Fax (907) 235-6342

2 enclosures



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

January 31, 1986

TO: DGC - Jim Brennan
GCF - Jay Johnson
F/AKR - Bob McVey
NPFMC - Jim Branson

FROM: GCAK - Pat Travers *Pat*

SUBJECT: Recommendation that Implementation of the Alaska Tanner Crab FMP be Suspended Promptly by Emergency Regulation, and that Proceedings for the FMP's Permanent Revocation be Commenced

INTRODUCTION

We are each aware of the many difficulties that have arisen over the past several years in the management of the Alaska Tanner crab fishery under the Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP or plan). Attempts to remedy these problems through limited changes to the FMP and its implementing regulations, 50 CFR Part 671, have repeatedly failed to reconcile the desires and capabilities of the North Pacific Fishery Management Council and NOAA for management of the fishery with the requirements of the Magnuson Act and other Federal law. The purpose of this memorandum is to suggest that continued implementation of the FMP is therefore not only undesirable, but indeed may be inconsistent with NOAA's legal obligations.

The following discussion first provides some information about the background of the FMP. It then presents the reasons that continued implementation of the FMP would probably violate the Magnuson Act and other Federal law. Finally, it suggests the procedures, first, for the prompt suspension by emergency regulation of the plan's implementation and, second, for its permanent revocation.

BACKGROUND

The FMP was adopted by the Council in September 1977, and was approved by NOAA in May 1978. It was one of the very first plans implemented under the Magnuson Act, and bears the features characteristic of the plans of that period. Optimum yield is specified rigidly as fixed ranges of the amounts of Tanner crab

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4350 HOMER SPIT ROAD
HOMER, ALASKA 99603
PHONE: (907) 235-3160

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ORIGIN:

TERMINAL TARIFF NO. 600

600

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that may be taken in specified areas each year. Season opening and closing dates are similarly specified for each area. Because they are so specifically prescribed in the FMP, these areas and the O's and season dates that are assigned to them can be changed in the long term only by amendment to the FMP. This is understandable, because the concept of "frameworking" these items so that they could be changed without plan amendments was developed by NOAA long after the FMP's initial implementation, after the complexity of the plan amendment process came to be appreciated fully. In an attempt to provide some flexibility on these matters, the FMP and its implementing regulations included provision for season date changes by so-called "field orders" when it was found too high. It is the narrowness with which this "field order" provision was drafted that has caused most of the difficulties with the FMP's implementation, as will be discussed below. Other provisions prescribed in great detail reporting requirements, gear limitations, and area registration procedures, some of which were intended to reduce the competitive advantages of large vessels capable of fishing over great distances.

For all of its agonizing detail, the text of the FMP is quite frank in stating that its underlying intention is to preserve, to the extent possible, the State of Alaska's system for Tanner crab management as it might exist at any particular time. The original provisions of the FMP and its implementing regulations were for the most part a restatement of the 1977-78 Alaska Tanner crab regulations. Most of the nine amendments to the FMP have had as their sole purpose the conformance of the plan to annual changes in the State requirements. Throughout the period of its implementation, the solid consensus of a majority of the Council and of the NMF's Alaska Region staff has been that the State of Alaska Tanner crab management system is superb, and that interference with it in any but the rarest circumstances is to be avoided by NOAA. Alaska's management jurisdiction over all vessels participating in the fishery has never been successfully challenged. Neither the NMF's Alaska Region nor the Council has developed any significant capability of its own to evaluate State Tanner crab management actions independently, and both agencies have always appeared to be quite content with this situation. This leads to the question why the FMP was implemented in the first place. There appear to have been three main reasons, each of which has since been undercut by events.

The first of these was the then widespread belief, now considered to have been erroneous and specifically repudiated in an amendment to the Magnuson Act, that the Act required implementation of a plan for every fishery taking place in

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the FCZ, whether or not that fishery was adequately conserved and managed by other means. The second was the desire of the Council to expedite the elimination of foreign vessels from the fishery. This was accomplished by Amendment 7 to the FMP in 1983. Without affirmative action by NOAA to reintroduce foreign Tanner crab fishing through a preliminary management plan, such fishing would continue to be excluded even without the FMP.

The third reason was strong political pressure for an FMP from non-Alaskan participants in the fishery who desired a means of checking State discrimination against them that they alleged to have taken place in the past. This continues to be a major consideration in deciding what to do about the FMP. Amendments to the Magnuson Act have, however, greatly weakened the force of this argument. At the time the FMP was first implemented, neither the Council nor NOAA had authority to take any management action for a domestic fishery in the FCZ, even in an emergency situation, unless an FMP had first been approved for that fishery. Thus, it was necessary to implement the FMP in order to secure for these agencies any opportunity at all to intervene in the Tanner crab fishery's management. The Magnuson Act now, however, authorizes the Council and NOAA to adopt emergency regulations even for fisheries for which FMPs have not been implemented. Thus, if the State were, in fact, to adopt a regulation that discriminated on the basis of State residence, or otherwise violated the Act's requirements, the Council and NOAA could effectively nullify it by emergency regulation for at least the first year even in the FMP's absence. Combined with the threat to reinstate an FMP, such action would in all likelihood convince the State to modify the offending action. State measures that plainly violate the Magnuson Act, especially the ban on discrimination on the basis of State residence, will also frequently violate other Federal and State constitutional and statutory requirements. This provides a basis for permanent judicial reversal of such measures whether or not an FMP has been implemented. The Alaska courts, for example, have recently cast into doubt the permissibility under State law of the "exclusive registration areas" that have been a major concern of the non-Alaskan participants in the Tanner crab fishery.

The abundance of Tanner crab resources off Alaska has steadily declined during the period of the FMP's implementation. In the Bering Sea, for example, the 1978 abundance estimate for harvestable male crab was 45.6 million crab, already less than half of the 1977 estimate of 92.1 million crab. The 1985 estimate was 4.4 million crab, and the estimate has not exceeded 10 million crab since 1982. The FMP does not reflect this drastic reduction in Tanner crab abundance, which it was

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RULE: 01 - SCOPE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 02 - APPLICATION OF RATES AND CHARGES (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 03 - RATE APPLICABILITY RULE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 04 - HEAVY LIFT (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 05 - EXTRA LENGTH (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 06 - MINIMUM BILL OF LADING CHARGES (I)

EFF: 31OCT1994

NOT APPLICABLE

originally intended to help prevent. The OY specifications, in particular, reflect much higher abundance than has actually occurred in several years.

INCONSISTENCY OF THE FMP WITH THE MAGNUSON ACT AND OTHER FEDERAL LAW

The circumstances just described have, during the FMP's implementation, caused a number of problems in the management of the Tanner crab fishery. As a result of these problems, the fishery's management has consistently failed to conform to the requirements of the Magnuson Act, especially the national standards of §301, and has also violated other Federal statutes, not to mention the FMP's own implementing regulations.

The most common variety of these problems results from the combination of a number of the circumstances described above. The abundance of Tanner crab has been changing greatly from year to year, generally downward. State of Alaska management officials must therefore usually wait until fishing in an area has begun before knowing how much Tanner crab can be caught in that area during the current year, and how long the season should be. As was noted above, the OYs and season dates prescribed in the FMP and its implementing regulations are quite rigid, and no longer reflect the condition of the resource. In the absence of the FMP, the State closure notices that do reflect that condition would apply to all vessels in the EEZ that are registered under the laws of the State of Alaska. All vessels participating in the fishery are so registered. Neither NOAA nor the Council have any basis for questioning the merit of the State's closure decisions, and both in fact have great confidence in them. Nevertheless, because of the specific nature of the FMP's OY and season prescriptions, the State closures may not apply in the FCZ to any vessel unless ratified by NOAA through amendment of the FMP, through promulgation of an emergency regulation, or through issuance of a "field order". Of these three procedures, only the last can generally be carried out in the short time available between the State closure decision and the point at which harm to the affected Tanner crab stocks will occur. Unfortunately, the field order authority as narrowly drafted authorizes action to close the season only when the condition of the affected stock is substantially different from that anticipated at the beginning of the fishing year, currently November 1. In many instances, the State managers will have made a preliminary estimate of the stock's abundance by that date that is then vindicated by the information provided in the course of the fishery. When this highly desirable situation

PORT AND HARBOR OF HOMER
4350 HOMER SPIT ROAD
HOMER, ALASKA 99603

PHONE:(907) 235-3160

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RULE: 07 - PAYMENT OF FREIGHT CHARGES (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 08 - BILL(S) OF LADING (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 09 - FREIGHT FORWARDER COMPENSATION (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 10 - SURCHARGES AND ARBITRARIES (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 11 - MINIMUM QUANTITY RATES (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 12 - AD VALOREM RATES (I)

EFF: 31OCT1994

NOT APPLICABLE

occurs, a field order ratifying the State closure decision is not authorized by the FMP and its implementing regulations, because the stock's condition is not different from that previously anticipated. Thus, the fishery must be allowed to continue in the EEZ until either an FMP amendment or emergency regulation can be implemented, or until the resulting overfishing of the stock causes its condition in fact to differ from that which was previously correctly anticipated. Alternatively, field orders ratifying State closures have been issued in contravention of the field order authority. Because such field orders are unlawful, no violations of them may be penalized, and they are subject to judicial reversal. Attempts to change the field order authority have failed, because complete resolution of the problem just described would require that the NMFS Alaska Regional Director be vested with almost complete discretion to open and close Tanner crab seasons. While such broad discretion would be lawful, it is inconsistent with current NOAA and DOC policy.

The situation just described violates the Magnuson Act in a number of different ways. It violates national standard 1 of Magnuson Act §301 by failing to prevent overfishing. It violates national standard 2 by causing conservation and management not to be based on what is conceded to be the best scientific information available. It violates national standards 5, 6, and 7 by failing where practicable to promote efficiency in the utilization of fishery resources; failing to account for variations and contingencies in fisheries; and failing where practicable to minimize costs and avoid unnecessary duplication. In light of current NOAA and DOC policy against delegation of discretionary season closure authority to the regional level, it is plain that implementation of the FMP in anything like its current form will inevitably suffer from these legal defects.

Another kind of problem arises when State managers determine that the opening of a Tanner crab season in an area should be advanced. This is usually done in response to an economic consideration, such as unexpected availability of processing or harvesting capacity due to the sudden termination of other fisheries. The FMP's field order authority allows action only to protect Tanner crab stocks. It does not permit season changes based on social or economic considerations, even where, as here, there is no biological reason for adhering to the original season opening date, and doing so will cause severe economic harm to participants in the fishery. Neither would it permit extension of a season if a Tanner crab stock should prove during the fishery to be in better condition than was previously anticipated. Once again, a remedy for this situation under the FMP would require that the Regional Director

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RULE: 13 - TRANSSHIPMENT (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 14 - CO-LOADING IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 15 - OPEN RATES IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 16 - HAZARDOUS CARGO (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 17 - GREENSALTED HIDES IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 18 - RETURNED CARGO IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

he granted management discretion far broader than is currently sanctioned by NOAA and DOC policy. The FMP's implementation thus violates national standards 2, 5, 6, and 7 in this respect as well.

The very structure of the FMP and the volatility of Tanner crab stock conditions appear to ensure that the plan will violate Magnuson Act requirements. The rigid specification of MSY and OY in terms of particular quantities of Tanner crab that can be changed only by FMP amendment practically guarantees that the FMP will consistently violate national standards 2 and 6, as well as the requirement of Magnuson Act §303(a)(3) that a plan specify MSY and OY. At the same time, the fluctuating nature of Tanner crab stocks and the sparse information available about standards for "frameworking" these and other provisions of the FMP.

The problems just described also raise questions under Federal law other than the Magnuson Act. They may, for example, render actions under the FMP vulnerable under the arbitrary and capricious standard of judicial review prescribed in the Administrative Procedure Act. They would also seem to call into question the conformity of the FMP with the substantive provisions of Executive Order 12291.

For all of the above reasons, I recommend strongly that NOAA and the Council request that NOAA, and DOC and the requirements of the Magnuson Act and other Federal law will be developed in the near future. Even if an effort to do this is undertaken, the current unlawful situation in the management of this fishery should be ended at once by revocation of the FMP for the interim.

PROCEDURES FOR TERMINATING IMPLEMENTATION OF THE FMP

The implementation of the FMP could be terminated by NOAA immediately for a period of 90 days, after which time it would be necessary for extending this regulation for another 90-day period. Permanent revocation of the FMP would seem to require first that NOAA request the Council to take such action, preferably at the same time the Council is requested to concur in the emergency regulation. If the Council declined to do

PORT AND HARBOR OF HOMER
4350 HOMER SPIT ROAD
HOMER, ALASKA 99603

PHONE:(907) 235-3160

TERMINAL TARIFF NO. 600

FMC

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RULE: 19 - SHIPPER'S REQUESTS IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 20 - OVERCHARGE CLAIMS (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 21 - USE OF CARRIER EQUIPMENT (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 22 - AUTOMOBILE RATES IN DOMESTIC OFFSHORE COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 23 - CARRIER TERMINAL RULES AND CHARGES (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 24 - NVOCCS IN FOREIGN COMMERCE: BONDS AND AGENTS (I)

EFF: 31OCT1994

NOT APPLICABLE

this, NOAA would have authority to revoke the FMP unilaterally under Magnuson Act §304(c).

In considering this matter, the Council will naturally be concerned whether revocation of the FMP will diminish its role in management of the Tanner crab fishery. As was noted above, the Council has generally been content in the past to rely on the judgment of State management agencies for this fishery, reserving the right to intervene in cases of plain conflict with the Magnuson Act or Council policy. Because of the expanded emergency regulation authority of Magnuson Act §305(e), also described above, the Council and NOAA now have the authority to take such action even in the absence of an FMP. It will be important to reassure the Council that its role in management of the fishery under this authority will be meaningful before it decides what to do about the plan.

Please let me know if you need any more information in order to evaluate this proposal.

PORT AND HARBOR OF HOMER
4350 HOMER SPIT ROAD
HOMER, ALASKA 99603

PHONE: (907) 235-3160

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RULE: 25 - CERTIFICATION OF SHIPPER STATUS IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 26 - TIME/VOLUME RATES IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 27 - LOYALTY CONTRACTS IN FOREIGN COMMERCE (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 28 - DEFINITIONS (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 29 - SYMBOLS (I)

EFF: 31OCT1994

NOT APPLICABLE

RULE: 30 - ACCESS TO TARIFF INFORMATION (I)

EFF: 31OCT1994

NOT APPLICABLE

the Magnuson Act.
United States and should be managed for the benefit of everyone in the U.S. in accordance with the provisions of

2. The fishery resources of Alaska are the property of the

particular findings 2, 3, and 6, of the Council, as follows:
contemplated by subsection 302(h)(1) of the Magnuson Act and create a situation which demands the Federal management oversight capitalization in crab fisheries, particularly in the Bering Sea, and the interstate nature of the crab fleet and heavy variation in the abundance of king and Tanner crabs of Alaska, for Federal management of fisheries of Alaska. The history of findings regarding fishery management policy which address the need North Pacific Fishery Management Council (Council) adopted requires conservation and management. On December 7, 1984, the a fishery management plan (FMP) be prepared for any fishery that 1801, et seq.) (Magnuson Act), subsection 302(h)(1), requires that The Magnuson Fishery Conservation and Management Act (16 U.S.C.

previously unexploited stocks.
abundance and catch, and by the development of fisheries for history is characterized by spectacular fluctuations in crab of extensive commercial exploitation for 20 or more years. That The king and Tanner crab populations of Alaska have had a history

INTRODUCTION

Enclosure #2

After this initial action, the decision was made to coordinate Federal management of crab fisheries with the State of Alaska (State). This decision was based on a desire to optimize the use of limited State and Federal resources and prevent duplication of effort by making use of the existing State management regime. The

on the foreign Tanner crab fishery. fishing for king crab was allowed and restrictions were continued (U.S. Department of Commerce, 1977). Under the RMP, no foreign foreign king and Tanner crab fisheries in the eastern Bering Sea implemented a Preliminary Fishery Management Plan (RMP) for the in January 1977, the Secretary of Commerce (Secretary) adopted and

Alaska.

management of fisheries in the Exclusive Economic Zone (EEZ) off for preparing RMPs and amendments to RMPs for the conservation and Pursuant to subsection 302(h)(1), the Council has responsibility

6. The lack of timely and adequate data has hampered Federal decision-making and management to the detriment of the resource and the economy (see page 1-4 for reasons for suspending Federal Tanner crab RMP).

3. The common property nature of fishery resources tends to cause overcapitalization in the industry, increases the chances of resource depletion, and decreases the incentive for conservation of the resource by the users.

Hereafter the term "Board" will be used to denote the Alaska Board of Fisheries or its successor entities.

The Tanner crab RFP was approved by the Secretary and published in the Federal Register on May 16, 1978, (43 FR 21170) under the authority of the Magnuson Act. Final implementing regulations applicable to vessels of the United States were published on December 6, 1978, (43 FR 57149). Final implementing regulations applicable to vessels of foreign nations were published on

crab management, and research and enforcement programs. equipment, experienced personnel capable of carrying out extensive facilities, communications, information systems, vessels, and processors. The State has made a substantial investment in resource utilization patterns, and is familiar to crab fishermen flexible enough to accommodate changes in resource abundance and extensive public input, ensures necessary annual revisions, is laws of the State. The State's regulatory system provides for management of the crab fisheries for vessels regulated under the currently responsible for regulating and establishing policy for the Coast of Alaska. The Alaska Board of Fisheries (Board) is accordance with the RFP for the Commercial Tanner Crab Fishery of Alaska (GOA) from December 6, 1978, until November 1, 1986, in the Bering Sea and Aleutian Islands (BS/AI) area and the Gulf of the Aleutians in 1973, and jointly managed the Tanner crab fishery crab fisheries since their inception in the Bering Sea in 1968, in waters since statehood in 1959. It also managed domestic Tanner State has managed King crab fisheries inside and outside State

December 19, 1978, (43 FR 59075, 43 FR 59292). The FMP was amended nine times, most recently on September 12, 1984, (49 FR 35779). To achieve its conservation and management objectives and to coordinate management effectively with the State, the FMP adopted many of the management measures employed by the State. In October 1981, the Council and the State adopted a joint statement of principles for the management of domestic king crab fisheries in the BS/AI area (see Appendix A). This agreement formed the basis for interim management during development of the BS/AI king crab FMP. A notice of availability of the FMP was published on July 19, 1984, (49 FR 29250). A final rule was published on November 14, 1984, (49 FR 44998). Although the Federal regulations implementing framework provisions of the FMP were effective December 2, 1984, actual implementation of management measures under the FMP was deferred pending acceptance of the delegation of authority by the Governor of Alaska. In a letter dated June 20, 1986, the Governor declined the delegation of authority. His principal objections to the delegation were: excessive Federal oversight, uncertainties in the regulatory approval process, unnecessary governmental duplication, and concerns for the degree to which discretionary authority of the Board would be constrained.

At its March 1986 meeting, the Council voted to suspend the implementing regulations for the Tanner crab FMP because it did not provide for management based on the best available scientific information, provide for timely coordination of management with the State, or conform to several of the Magnuson Act's national

standards. Following the March meeting, the Council published management alternatives for public comment. The three major alternatives were: (1) State management with no Federal FMP, (2) an FMP that delegates management to the State; or (3) an FMP with direct Federal management. Three overriding concerns were evident in the public comments reviewed by the Council in September. Any management arrangement must provide efficient and effective management, conservation of the crab stocks, and fair access by all user groups to management's decision-making. The Council, at its September 24-26, 1986, meeting, appointed a workgroup of both industry representatives and Council members to develop a comprehensive management approach for crab fisheries off Alaska that would address these concerns.

On November 1, 1986, the National Oceanic and Atmospheric Administration (NOAA) promulgated an emergency interim rule, at the request of the Council, to repeal the regulations implementing the Tanner crab FMP for a period of 90 days (November 1, 1986, through January 29, 1987, (51 FR 40027)).

On November 20, 1986, the Council workgroup met and recommended repeal of the Tanner crab FMP and its implementing regulations. The workgroup recommended that the Council's crab plan team draft a new FMP that includes both king and Tanner crabs, limits its scope to the BS/AI area, and defers management to the State to the maximum extent possible.

At its December 1986 meeting, the Council voted to request extension of the emergency interim rule repealing regulations implementing the Tanner crab FMP for a second 90-day period (January 30 through April 29, 1987). The Council also accepted the recommendation of the Council workgroup to begin preparation of a new king and Tanner crab FMP that would replace both previous FMPs for the BS/AI area, but not address king and Tanner crab fisheries in the Gulf of Alaska for the present time. The Council also determined that the 180-day duration of the emergency interim rule was insufficient to complete a study of management options, prepare a new FMP, and complete the Secretarial review process. The Council, therefore, requested the Secretary to prepare and implement a Secretarial amendment repealing the Tanner crab FMP and its implementing regulations, to allow time for preparation, approval, and implementation of a new FMP for king and Tanner crabs in the BS/AI area, and to prevent reinstatement of the Tanner crab FMP implementing regulations which did not conform to the Magnuson Act national standards. A final rule was published on May 11, 1987, (52 FR 17577) implementing the Secretarial Amendment repealing the Tanner crab FMP effective April 29, 1987.

This FMP is written as a cooperative FMP in an attempt to avoid problems that were encountered in the previous Tanner and king crab FMPs. It contains a general management goal with seven management objectives identified, and relevant management measures required to meet the objectives that are presented. Several management measures may contribute to more than one

Federal management oversight to determine if an action is consistent with this RMP, the Magnuson Act, and other applicable Federal law is also provided in the form of a review and appeals procedure for both State pre-season and in-season actions and through formation of a Council Crab Interim Action Committee.

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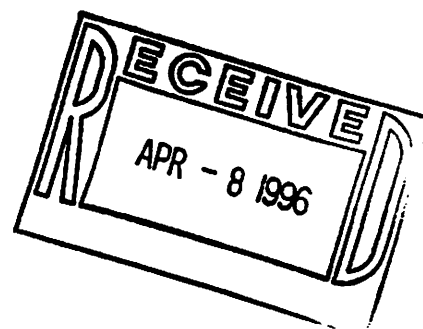
amendment to change.

controversial measures are fixed in the RMP and require Plan defers much of the management to the State, while the most This RMP attempts to avoid unnecessary duplication of effort. It

measures may be more appropriate. encouraged in the RMP to determine if alternative management evolved over the history of the fishery. Additional analysis is the King and Tanner crab fisheries of the BS/AI area and have The management measures are ones that have been used in managing on a case-by-case basis. objective, and several objectives may mesh in any given decision

Sherry Tuttle
PO Box 6282
Sitka, AK 99835

Richard Lauber, Chairman
North Pacific Fisheries Management Council
605 West 4th, Suite 306
Anchorage, AK 99501



Mr. Chair:

April 8, 1996


My name is Sherry Tuttle and I am a full time commercial fisher. I have been fishing full time for the past 8 years and currently reside in Sitka. The new vessel moratorium on ground fish is creating a serious hardship.

Three years ago I made the decision to upgrade my troll/longline operation and purchased a larger vessel with freezing capabilities. At that time I was not able to get any concrete answers regarding the pending vessel moratorium. I now find that while my prior vessel is qualified as a result of rockfish landings I made, my current vessel is not qualified, and I am therefore unable to participate in the directed rockfish fishery. This has occurred at the same time that my income from halibut fishing has been essentially eliminated due to implementation of the IFQ program (I crewed during the years that counted, and fished my own boat in the years that didn't), and at the same time that the troll fishery is experiencing hard times.

From my perspective, the vessel moratorium seems extremely unfair - the fellow who purchased my old troller now has moratorium rights for a fishery in which he never participated, while I, in turn, am disqualified from the fishery. I am hoping that the specifics of the moratorium program can be reconsidered, and such obvious unfairness avoided.

Thank you for your time and consideration.

Sincerely,



Sherry Tuttle
F/V Rose

