November 1st, 2022

Mr. Jon Kurland
Regional Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668
Filed electronically at www.regulations.gov

RE: Petition for Emergency Action to Close the Red King Crab Savings Area and Subarea to All Fishing Gear With Bottom Contact. Public Comment on Docket Number RTID 0648-XC495, 87 FR 65183, October 28, 2022

Dear Mr. Kurland:

On behalf of the Alaska pollock harvesters and processors we represent, we write in response to the petition for emergency rulemaking you received from the Alaska Bering Sea Crabbers (ABSC) on September 29, 2022. The petition seeks action that would effectively close 3,900 nm^2 of the Bering Sea to pollock fishing vessels from January 1, 2023 to June 30, 2023.

Thank you for inviting public comment via the Federal Register in your notice published on October 28th. As you will be aware, the North Pacific Fishery Management Council (NPFMC) has requested an analysis that they plan to review at their meeting next month. That analysis will be important, and it may be used as a basis for NPFMC actions that follow the established Magnuson-Stevens Fishery Conservation and Management Act ("MSA") rulemaking process. Accordingly, we anticipate that many fishery participants will seek to provide detailed comment to both you and the NPFMC when that analysis is made public—including through this formal comment opportunity if the analysis is available prior to the December 5th comment deadline.

Even prior to completion of the analysis, however, it is already clear that the petition for emergency rulemaking does not address the conservation challenge presented by crab

abundance declines, does not meet the agency's emergency rule criteria, and could have broad, unexpected, and unanalyzed impacts on other fishery resources.

1. **The Requested Action Does Not Result from Recent Unforeseen Events or Recently Discovered Circumstances**

Scientists and managers have long been focused on challenges relating to crab abundance and recruitment. Bristol Bay red king crab ("BBRKC") has been undergoing a long-term decrease in stock abundance over the last 13 years and has been at or near historic low abundance multiple times since the stock collapse in the early 1980s.[1] The fishery was closed in August 2021. The NPFMC has responded to abundance declines by implementing a range of management measures, including time and area closures, habitat closures, and Protected Species Catch ("PSC") limits that are lowered when BBRKC abundance declines. The National Marine Fisheries Service ("NMFS") and the NPFMC (in addition to the State of Alaska) have had a lot of time—more than a year since the fishery closure, and more than a decade since abundance and recruitment declines became evident—to consider these and additional management measures through the rigorous, deliberative, transparent, and science-based management process that is mandated by the MSA.

NMFS's October 21, 2022 Statement on Alaska Crab Stock Declines reiterates this point, stating that: "Recent declines in Bristol Bay red king crab fisheries are part of a 50+ year history of highly variable stock abundance that included previous fishery closures."[2] In short, it is clear that declines in BBRKC abundance are in no way the kind of recent unforeseen event or recently discovered circumstance for which emergency rulemaking might be appropriate.

2. **The Requested Action Does Not Address Serious Conservation or Management Problems in the Fishery**

The best available science indicates that changes in the ecosystem and temperature are the primary driver of poor crab recruitment and low abundance. Closing the Red King Crab Savings Area (RKCSA) and Red King Crab Subarea (RKCSS) to the pelagic trawl vessels operated by our members will not address the causes of crab abundance decline.

First, our vessels have extraordinarily low levels of red king crab incidental catch—in general, and within the RKCSA and RKCSS. Federal on-board observers tally and report everything that is caught by our fleets. Their data confirm that incidental red king crab mortality has numbered between 0 to 27 animals total per year across the entire BSAI Alaska pollock fleet since 2013.[3] Not once in the last decade have the BSAI Alaska pollock fleets taken more than 23 animals within RKCSA in a calendar year. Second, broader impacts of fishing activity on crab stock

[1] https://meetings.npfmc.org/CommentReview/DownloadFile?p=d26d1383-cd85-4545-b4e7-29d402f414bf.pdf&fileName=D2%20BBRKC%20Discussion%20Paper.pdf, Figure 0-1, p.3
[2] https://www.fisheries.noaa.gov/news/statement-alaska-crab-stock-declines
[3] https://meetings.npfmc.org/CommentReview/DownloadFile?p=d26d1383-cd85-4545-b4e7-29d402f414bf.pdf&fileName=D2%20BBRKC%20Discussion%20Paper.pdf, Table 2-2, p. 21

abundance have repeatedly been considered through the NPFMC's regular Essential Fish Habitat ("EFH") assessments. The most recent EFH assessment shows the impact of all fishing activities on the red king crab stock are temporary and minimal.[4]

Furthermore, the most recent Eastern Bering Sea summer trawl survey shows that the RKCSA may not represent key habitat for mature female red king crab—in 2022, average density appeared to be less than 120 animals per nmi^2, with only a very small high-density area of males within the SE corner of the RKCSA.[5]

We agree with NMFS's recent statement on the crab declines, noting that: "Climate change will continue to present challenges to our understanding of marine ecosystems in Alaska and elsewhere. We have a robust science enterprise and management system that will allow us to better prepare and adapt to these changes."[6] Our robust management system requires careful deliberation and consideration of all the potential factors that may be affecting red king crab. The petition provides one potential very narrow approach relating to a fishery with comprehensive observer coverage and extraordinarily low levels of red king crab bycatch. There are numerous other approaches that the NPFMC and NMFS should examine, including: the adequacy of monitoring in groundfish fisheries with crab bycatch; whether bycatch limits should be extended to other fisheries without existing crab bycatch limits; and whether the existing closure areas established 25 years ago continue to represent areas important to red king crab given significant and ongoing climatic changes.

The best available scientific information clearly indicates that the requested action would not address challenging climatic conditions affecting red king crab and would not address other management challenges that are known to impact BBRKC. Accordingly, it clearly fails to meet the agency's emergency rule criteria.

3. **The Value of Advance Notice, Public Comment, and Deliberative Consideration of Impacts on Participants Outweighs Any Immediate Benefit of Emergency Action**

As detailed above, there are no apparent, immediate benefits to be derived from granting the requested emergency action. Weighing strongly against any conceivable crab conservation benefit is the fact that new area-based closures in the Bering Sea involve significant trade-offs that should be carefully evaluated through the established MSA process using standard rulemaking procedures. That process requires careful deliberation, and is not addressed by a limited public comment opportunity on this emergency petition and a limited analytical process.

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[4] https://meetings.npfmc.org/CommentReview/DownloadFile?p=8547b7bb-396d-4288-8bf0-32eaa5f0ee96.pdf&fileName=C6%20EFH%20Omnibus%20Ams%202017%20Final%20EA.pdf, p.56

[5] https://meetings.npfmc.org/CommentReview/DownloadFile?p=6ccf8912-876c-47b3-8068-bffa491e1221.pdf&fileName=PPT_2022%20bottom%20trawl%20survey%20results.pdf, p.7-8

[6] https://www.fisheries.noaa.gov/news/statement-alaska-crab-stock-declines

First, closure of this area would cause substantial direct harm for the pollock fishery and individuals and communities reliant on the pollock resource. Second, shifting fishing effort out of the RKCSA would limit the flexibility of the fleets to avoid non-target species, including salmon. In the case of Alaska pollock vessels, closure of the RKCSA would result in moving fishing effort to areas where Chinook salmon bycatch rates are known to be significantly higher—3.5 times higher for the catcher-processor fleet. Third, granting the requested emergency action could have unanticipated and unanalyzed impacts on other fishery participants. Moving fishing effort into areas and during times when fishing has not typically occurred could lead to increased gear conflicts and reduced harvests. The NPFMC is the established and appropriate forum for transparent analysis and deliberation of such trade-offs.

It is clear that the value of advance notice, public comment, and deliberative consideration of impacts on participants strongly outweighs any immediate benefit that could conceivably be derived from the requested emergency rulemaking. Against this criteria too, the requested action fails to meet the agency's established threshold for emergency rulemaking.

Conclusion

Declines in red king crab stock abundance are immensely concerning. Closure of the fishery is causing hardship in Alaska fishing communities such as St. Paul Island, and depriving countless small family-owned businesses of income. It is critical, however, that the response of managers be based on the best available science and targeted at the causes of decline. The request for emergency rulemaking is an unhelpful distraction from the challenge that must be addressed.

We look forward to reviewing the analysis that has been requested by the NPFMC when it is completed and publicly available, and to providing you with additional comment at that time.

Sincerely,

Stephanie D. Madsen

Stephanie Madsen
Executive Director
At-sea Processors Association

Heather Mann

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