

M E M O R A N D U M

TO: Council, AP and SSC Members

FROM: Jim H. Branson  
Executive Director

DATE: December 2, 1986

SUBJECT: Management of Crab Fisheries

ACTION REQUIRED

- (1) Report of Crab Management Committee
- (2) Council recommendations for further action.
- (3) Council recommendation on extending emergency rule suspending Tanner crab regulations.
- (4) Council recommendation on disposition of Tanner crab FMP.

BACKGROUND

The Council voted last March to suspend the implementing regulations for the Tanner crab plan. A history of the problems that led to that decision is presented in D-1(c). The plan team then developed an options paper analyzing management alternatives for the fishery, which went out for public comment over the summer. It contained three major alternatives:

Alternative A: No FMP.

Option 1: Terminate FMP.

Option 2: Develop a joint statement of principles.

Alternative B: FMP that delegates management to State.

Alternative C: Retain FMP and federal management.

Option 1: Completely overhaul FMP.

Option 2: Selectively revise FMP to remove procedural problems.

The comments received indicated that industry groups were basically polarized into two positions. There were those such as the Alaska Crab Coalition, Kodiak Longliners Association, and United Fishermen's Marketing Association who favored State of Alaska management, no FMP, and perhaps a joint statement of principles between the Board of Fisheries and the Council.

The other groups such as the North Pacific Fishing Vessel Owners Association, Fishing Vessel Owners Association, Highliner's Association, Midwater Trawlers Cooperative, Alaska Factory Trawlers Association, Coalition for Open Ocean Fisheries, Northern Deep Sea Fisheries, Marine Resources Company, and Westward Trawlers favored retaining an FMP, selectively revised to make it workable.

Four overriding concerns were evident in the public comments reviewed by the Council in September. Regardless of the management arrangement used, it should provide the following:

- (1) Efficient and effective management.
- (2) Conservation of the crab stocks.
- (3) Fair access by non-residents to management decision-making.
- (4) Protection for non-residents against discrimination.

The Council then appointed an industry-Council workgroup, the Crab Management Committee, to address these concerns and develop a comprehensive management approach for the crab fisheries off Alaska. Larry Cotter (as chairman), Lloyd Cannon, Don Collinsworth, Bob McVey, Rudy Petersen, Thorn Smith, Jeff Stephan, Arni Thomson, John Winther, and Bill Woods were requested to serve on the committee.

#### Committee Recommendations

The Crab Management Committee met in Seattle on November 20. All members were present except Don Collinsworth who was represented by Fred Gaffney.

The committee first considered the major alternative--whether or not to have an FMP. Bob McVey stated that NMFS/NOAA's latest position was that an FMP was strongly favored. An FMP delegating routine management to the State was acceptable, preferably covering both king and Tanner crab. He emphasized that NMFS was prepared to "accord great deference to state management of the crab fisheries." In light of the NMFS/NOAA position, the committee thoroughly discussed alternative management arrangements and the scope of a proposed FMP. A summary of committee discussions is in item D-1(a).

The committee recommends that the Council instruct the crab team as follows:

- (1) Draft an FMP with maximum flexibility to defer management to the state.
- (2) Include all king and Tanner crab species in the Bering Sea and Aleutians.
- (3) Work closely with NOAA General Counsel to ensure the plan's contents meet the required provisions of MFCMA Section 303 [see item D-1(b)].
- (4) Use the king crab FMP as a point of departure for developing the new plan.
- (5) Separate management measures into three categories: those that are fixed in the plan and need amendment, those that are frameworked, and those on which the plan remains silent. Present options if in doubt on certain measures.
- (6) Report back to the Council at its March 16-20 meeting.

The committee will be prepared to meet the first week of March with the plan team to review its progress. The general schedule for implementing the new FMP would be for the team, after initial review next March, to further develop

the FMP with guidance from the Council as necessary throughout 1987. The plan would formally be placed in the annual crab amendment cycle beginning in January, 1988. Final Council approval would be in May, 1988, and the FMP would then be submitted for public review over the summer, and be in effect for the 1988-89 winter fishery.

#### Extension of Emergency Rule

NMFS published an emergency rule effective November 1, 1986 that suspends the Federal Tanner crab regulations for 90 days, until the end of January. The Council will need to advise NMFS whether to extend this suspension for an additional 90 days. The Committee recommends extending the emergency rule: It was their understanding that in the interim, while the new plan is being developed, the State of Alaska would have full management authority for the crab fisheries inside and outside three miles.

#### Disposition of Current Tanner Crab FMP

Last March the Council voted to suspend only the Tanner crab regulations, not the FMP. NOAA GC has concluded that the plan violates several National Standards and therefore is illegal. NMFS suggests repealing the old plan.

The committee passed a motion that the Council request the Secretary of Commerce to develop a Secretarial Amendment repealing the plan. The motion passed seven to one with two abstentions.

Crab Management Committee  
Draft Meeting Summary  
November 20, 1986

The Crab Management Committee met in Seattle on November 20. Larry Cotter chaired the meeting and the following members were present: Lloyd Cannon, Bob McVey, Rudy Petersen, Thorn Smith, Jeff Stephan, Arni Thomson, John Winther, and Bill Woods. Committee member Don Collinsworth was represented by Fred Gaffney.

The committee first considered the major alternative - whether or not to have an FMP. Bob McVey stated that NMFS/NOAA's current position was that an FMP was strongly favored. An FMP delegating routine management to the State was acceptable, preferably covering both king and Tanner crab. NMFS was prepared to "accord great deference to state management of the crab fisheries." McVey also indicated that the implementing regulations for such a plan should provide at the minimum:

1. Effective participation in decision-making, for example, a NMFS-Council staff member sitting with the Board of Fisheries when discussing crab, and an opportunity to offer comment.
2. Expeditious procedures for appealing regulations set by the Board with a focus on whether they meet the requirements of MFCMA and other federal law.
3. Review of inseason measures on a different time scale than preseason measures to allow for responsive inseason management.

The state would have full authority in the FCZ to close fisheries without second-guessing by NMFS. The Board would have full authority to set management measures before the season which could take effect in the FCZ with an after-the-fact finding by NOAA as to the legality of the measures.

NOAA General Counsel Eileen Cooney stated that deferring management to the state would require the following:

1. An FMP with objectives and basic management measures.
2. NMFS/Council representatives meeting with the Board of Fisheries.
3. All vessels would need to be registered with the State. (This needs clarification because Pat Travers has argued that even non-registered vessels fishing in the FCZ could be held accountable for state regulations before they were published by NOAA.)
4. An after-the-fact finding by NOAA on legality of management measures.
5. An administrative record constructed after regulations took effect.

Regulatory Impact Analyses would be needed only if the FMP were amended, which would be rarely. The Council would have to decide which management measures should be so specific in the FMP as to require amendment to change. Most regulations would be set annually by the Board and not constitute a formal federal action.

In response to a concern raised by Fred Gaffney over State/Federal court jurisdiction over violations, Pat Travers stated that most violations off Alaska could be tried in either court. It's been the general practice for the state to preside over criminal violations and federal court to handle civil penalties. However both would be permissible in either court.

In response to a question from Chairman Cotter, Fred Gaffney stated that the State would not object to an FMP if it were structured properly.

Discussion ensued on whether to combine king and Tanner crab under one plan and to what area the plan should apply. Jeff Stephan indicated that an FMP covering both king and Tanner crab for the Bering Sea and Aleutian Islands would be acceptable. Rudy Petersen favored including the Gulf of Alaska as well. Bob McVey could not find anything wrong with including the Gulf except that the state's regulatory regime in the Gulf was very complicated and some of the measures may not pass muster under a full federal review when federal regulations are initially implemented for the FMP.

Jeff Stephan moved and John Winther seconded, that the committee recommend that the Council develop an FMP for king and Tanner crab in the Bering Sea and Aleutians. The motion passed 7 to 2 with Thorn Smith abstaining. The two voting against were Rudy Petersen and Bob McVey.

Chairman Cotter emphasized that the proposed FMP should be flexible, contain appeals provisions, and defer to state authority in managing the fisheries.

Based on the motion passed, the committee recommended that the Council instruct the crab team as follows:

1. Draft an FMP with maximum flexibility to defer management to the state.
2. Include all king and Tanner crab species in the Bering Sea and Aleutians.
3. Work closely with NOAA General Counsel to ensure the plan's contents meet the required provisions of section 303 of MFCMA.
4. Use the king crab FMP as a point of departure for developing the new plan.
5. Separate management measures into three categories: those that are fixed in the plan and need amendment, those that are frameworked, and those on which the plan remains silent. Present options if in doubt on certain measures.
6. Report back to the Council at its March 16-20 meeting.

The committee will be prepared to meet the first week of March with the plan team to review its progress. The general schedule for implementing the new FMP would be for the team, after initial review next March, to further develop the FMP with guidance from the Council as necessary throughout 1987. The plan would formally be placed in the annual crab amendment cycle beginning in

January, 1988. Final Council approval would be in May, 1988, and the FMP would then be submitted for public review over the summer, and be in effect for the 1988-89 winter fishery.

Disposition of Current Tanner Crab FMP

Last March the Council voted to suspend only the Tanner crab regulations, not the FMP. NOAA GC has concluded that the plan violates several National Standards and therefore is illegal. NMFS suggests repealing the old plan.

The committee passed a motion that the Council request the Secretary of Commerce to develop a Secretarial Amendment repealing the plan. The motion passed seven to one with two abstentions.

In addition the Committee recommends that the Council request NMFS to extend the emergency rule suspending the regulations, an additional 90 days (to the end of April).

It was the understanding of the committee that in the interim, while the new plan is being developed, the State of Alaska would have full management authority for the crab fisheries inside and outside 3 miles.

§1853 [303]. CONTENTS OF FISHERY MANAGEMENT PLANS§1  
[§50 CFR  
602.3

(a) Required Provisions. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery shall:

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are:

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b) of this section, or both; and

(C) consistent with the national standards, the other provisions of this chapter, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, and recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify:

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States; and

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors.

(b) Discretionary Provisions. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may:

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing,

(4)



(\$1853)  
[§303]

or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this chapter;

(5) incorporate (consistent with the national standards, the other provisions of this chapter, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account:

- (A) present participation in the fishery,
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery, and
- (F) any other relevant considerations;

(7) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region; and

(8) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) Proposed Regulations. The proposed regulations which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 1854 and 1855.

BRIEF HISTORY OF MECHANICAL PROBLEMS WITH TANNER CRAB PLAN

Problem

The Tanner crab plan was implemented on December 1, 1978 and was one of the Council's earliest plans. As originally drafted, the plan required formal amendments to change harvest levels or season opening and closing dates. In addition, field order authority was too limited to allow inseason response to changing conditions of the fishery. The problems with inflexibility came to a head in late 1982.

December 2, 1982: Beginnings of Amendment 9

NMFS Region requested the Council to amend the FMP to allow the use of rulemaking notices to set new seasons each year, thus enabling the Regional Director to establish new season opening dates within 30-75 days of the Council making its recommendations to NMFS. The reason for the request was that NOAA GC had determined that field orders (that require only 48 hours to implement) could no longer be used to set seasons because such authority was not provided in the FMP or regulations.

July 1983: Council adopts Amendment 9

As adopted by the Council, Amendment 9 had three provisions:

1. Established framework for setting seasons by preseason notice and comment.
2. Broadened the Secretary of Commerce's field order authority to adjust seasons or fishing areas for socioeconomic reasons (in addition to conservation).
3. Established new OYs.

September 12, 1984: NMFS publishes Final Rule for Amendment 9

NMFS approved provisions 1 and 3 but disapproved expanded field order authority because it was "not necessary nor appropriate for the conservation and management of the fishery." It was stated that the expanded authority was not illegal, but just too broad to qualify for an exemption from E.O. 12291 review by DOC and OMB. This disapproval was based solely on comments received from NMFS and NOAA. No industry comments were received.

December 1985: Protecting king crabs becomes a problem

Without expanded field order authority the FMP still only allowed field orders to be used to adjust seasons if:

1. Tanner crab conditions substantially differed from the condition anticipated at the beginning of the fishing year, and
2. Such differences necessitated inseason measures to protect Tanner crab.

At the December Council meeting, Northwest & Alaska Fisheries Center scientists raised concern about the poor condition of the red king crab stocks of the Bristol Bay Pot Sanctuary and advised the Council to consider closing the season. Concerns were also raised about the high bycatch of king crabs in the C. bairdi fishery in the area. The Region requested Council advice on closing the bairdi fishery in the Bering Sea, and indicated that an emergency order would be needed because the FMP's field order authority was not broad enough to be based on conservation of any species other than Tanner crab.

The Council advised the Region to use their discretion in closing the fishery (due to open January 15, 1986) after reviewing all stock status data available from the Center. The Council also set up a workgroup to determine how to protect king crab in the Eastern Bering Sea.

January 1986: NMFS encourages Council to expand field order authority

After the December meeting the Region and ADF&G reviewed the status of crab stocks. Because bairdi stocks also were in poor condition, the Region closed the fishery from January 15 to February 1. A basic question was whether the bairdi season should be opened at all in 1986.

NMFS included in the emergency rule temporarily closing the fishery, provisions authorizing the Regional Director to consider all relevant information concerning conservation and management of the Tanner and king crab as a basis for continuing, modifying, or rescinding the closure by field order. NMFS highlighted the constraints of the current field order authority and encouraged the Council to resubmit an amendment to the FMP to give comprehensive field order authority similar to that disapproved in Amendment 9.

At the January meeting, the SSC recommended no bairdi harvest and the AP recommended closing an area to all fishing for the rest of 1986. The Council supported the State and Federal action to close the Tanner fishery and agreed that future action in this fishery for 1986 should be delegated to the Regional Director and the Commissioner based on any new data that becomes available.

January 31, 1986: NOAA GC recommends that Tanner crab FMP should be immediately suspended or permanently revoked

Pat Travers based his recommendations on his finding that the plan violates the Magnuson Act in several ways. It violates National Standard 1 by failing to prevent overfishing. The restrictions on the use of field orders do not allow the the Regional Director to respond quickly to close down a fishery when stocks are in low abundance. It violates National Standard 2 by causing conservation and management to not be based on the best scientific information available. It violates national standards 5, 6, and 7 by failing where practicable to promote efficient utilization, failing to account for variations and contingencies in fisheries, and failing to minimize costs and avoid unnecessary duplication. These problems cannot be solved by increased field order authority because of NOAA and DOC current policy against delegation of discretionary season closure authority to the regional level. In addition the existing field order authority can only be used to protect Tanner crab and only under unforeseen circumstances.

March 1986: Council suspends Tanner crab regulations

At the March 1 joint Council/Board public hearing in Seattle, the following comments, highly summarized, were given:

Thorn Smith, NPFVOA - Do not revoke plan or suspend regulations. Federal plan is necessary and current FMP should be used until a framework amendment is developed.

Dennis Petersen - Supported continuation of an FMP.

Steve Hughes, Highliners Association - Supported FMP with framework amendment.

Ron Peterson - Recommended withdrawing FMP and letting State manage.

Kris Paulsen - Recommended delegating king and Tanner crab management to State with Federal oversight. Both plans should account for all removals of crab.

On March 17, the Region advised the Council that they agreed with Travers' description of the plan's deficiencies, but did not agree with his recommended solution. The Region recommended that the Council amend the FMP to produce a sound basis for managing the fishery either by (1) adding the flexibility necessary to reflect current management practices, or (2) adopting a delegation of authority to the State similar to the king crab FMP. They favored alternative 1 because king crab delegation problems had not yet been resolved. Amendments should focus on three issues: revising OYs, more flexible field order authority, and changing the FMP to reflect appropriate policies and methodologies to be used to manage the fisheries.

At the March meeting, the AP recommended turning over management to the State based on a joint statement of principles, and the SSC maintained their position that if the Council wished to maintain an active management role, the most critical areas of the plan should be reworked immediately, followed by amendment of less critical parts over a longer time, possibly on the 1987 amendment cycle.

The Board of Fisheries recommended suspending the FMP immediately and developing an operating agreement that would allow the State to set the rules beginning in 1987. If an operating agreement was unacceptable, then any Federal framework plan should give the State and Federal governments maximum flexibility to manage the fishery. If neither of these two approaches was acceptable, then the Board questioned whether the State should be involved at all in Tanner crab management.

The Council received testimony from the following:

Oliver Holm, Kodiak Longliners Association - Recommended State management under a joint statement of principles.

Thorn Smith, NPFVOA - Strongly opposed suspension of the Tanner crab plan.

The Council heard discussion from both the State and Federal perspectives and then voted to suspend the implementing regulations and instruct the plan team to develop Tanner crab management alternatives for public review.

June 1986: Council sends options paper out to public review

The Council reviewed a plan team discussion paper exploring alternatives for future Council/federal management of the Tanner crab fishery. They heard testimony from:

Thorn Smith, NPFVOA - Crab fisheries should be managed under the MFCMA. If the Council chooses State management, they should retain oversight capabilities.

The Council voted to send the discussion paper out for public review over the summer and asked NMFS to prepare a packet of amended procedures to remove the procedural problems of the FMP.

The Region told the Council that the rule suspending the Tanner crab regulations had been drafted and soon would be sent to Washington, D.C. An EA, RIR and 30-45 day public comment period would be required. If all went well, the regulations could be suspended by the September Council meeting.

The Council also received formal notice that the State had declined to accept Federal delegation of management authority for the Bering Sea king crab fishery. The Council decided to put the subject of king crab management on the September agenda after comments were in on the Tanner crab plan.

September 1986: Council establishes industry-agency workgroup

During the summer and at the September meeting, the Council received numerous public comments on the discussion paper. Highly summarized, they were as follows:

Arne Aadland, Thorn Smith, NPFVOA - selectively revise and retain FMP. Any acceptable alternative to Federal management would have to provide adequate protection for the interests of nonresident fishermen.

Bob Alverson, FVOA - selectively revise and retain FMP.

Slade Gorton, U.S. Senator - Federal responsibility in king and Tanner crab management must not be abdicated. Hopes that State and NMFS can work out differences over king crab plan.

Oliver Holm, Kodiak Longline Assn. - Terminate FMP.

Steve Hughes, Midwater Trawlers' Cooperative - favors fully implemented king and Tanner crab FMPs.

Ron Peterson, Arni Thomson, Alaska Crab Coalition - Withdraw FMP and replace with cooperative state/federal management under joint statement of principles. State should manage both directed and bycatch removals. Joint industry workgroup should be established to consult in the preparation of a new management program for the Bering Sea and Aleutians crab fisheries.

Joseph Wabey, Reidar Lyman, Severin Hjelle, Seattle fishermen - supports retention of FMPs for both king crab and Tanner crab.

Coalition of Seattle based fishermen including NPFVOA, Highliners' Association, Midwater Trawlers, FVOA, AFTA, Northern Deep Sea Fisheries, MRC, COOF, and Westward Trawlers - support amending the FMP to eliminate its procedural difficulties.

Jeff Stephan, UFMA - withdraw the FMP and manage under a joint statement of principles.

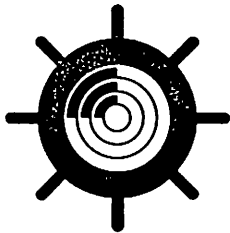
The Council concurred with part of the AP's recommendation and established a workgroup. They noted that the workgroup should not have a particular method of management in mind, but should explore all possibilities. Persons appointed to the workgroup included:

Larry Cotter, Chairman

Lloyd Cannon  
Don Collinsworth  
Bob McVey

Rudy Petersen  
Thorn Smith  
Jeff Stephan

Arni Thomson  
John Winther  
Bill Woods

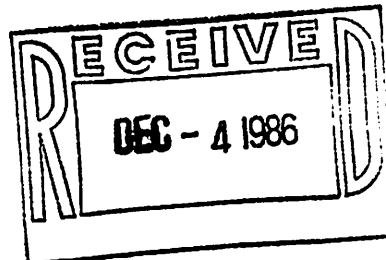


**North Pacific  
Fishing Vessel  
Owners' Association**

AGENDA D-1  
DECEMBER 1986  
SUPPLEMENTAL

November 24, 1986

Mr. Robert W. McVey  
Director, Alaska Region  
National Marine Fisheries Service  
P.O. Box 1668  
Juneau, AK. 99802



RE: Crab Management Off Alaska

Dear Bob:

On behalf of the broad spectrum of nonresident fishermen who have developed the crab and finfish fisheries in the EEZ off Alaska, I would like to thank you, your staff, and the NMFS/NOAA Washington Office for your clear support of a fishery management plan or plans for the crab fisheries off Alaska. The agency's firmly-expressed policy in support of the Magnuson Act and federal fishery management, expressed at the November 20 meeting of the NPFMC Crab Management Committee, was welcome.

We also appreciated your vote in favor of a plan or plans covering crab management in the Gulf of Alaska as well as the Bering Sea. There is nothing in the Magnuson Act nor in the biological nature of the fisheries which suggests that the Gulf should be excluded from the management unit. We will have more to say on this subject after our board meeting next week.

It goes without saying that nonresident fishermen are seeking the substantive and procedural benefits of the Magnuson Act in crab management. As the plan or plans are drafted, it will be useful to keep in mind the appropriate language on page three of the November 7 Council memorandum to the Crab Management Committee:

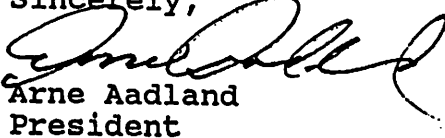
...Certain management measures such as seasons and harvest guidelines would be delegated to the State. More controversial measures such as size and sex and gear restrictions, could be placed in the FMP and changed only with an amendment....

Mr. Robert W. McVey  
November 24, 1986  
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Effective federal oversight will require specific FMP provisions against measures which could disadvantage the large and efficient vessels which form the backbone of the crab industry.

Again, we appreciate your forthright stand in favor of federal management.

Sincerely,



Arne Aadland  
President

cc: Dr. Anthony J. Calio  
Dr. William E. Evans