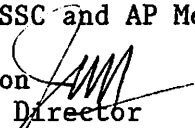


M E M O R A N D U M

TO: Council, SSC and AP Members

FROM: Jim Branson 
Executive Director

DATE: March 17 1982

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

ACTION REQUIRED

Council discussion with the Board of Fisheries of regulatory proposals concerning the 1982 BS/AI king crab fishery.

BACKGROUND

On October 20, 1981, the North Pacific Fishery Management Council and the Alaska Board of Fisheries adopted the Joint Statement of Principles for managing the domestic king crab fisheries in the Bering Sea and Aleutian Islands. This agreement requires that both bodies meet jointly at least once every year to review the management of the fishery, discuss any regulatory proposals, and determine if there is a need to amend the management framework. In preparation for this meeting the Council and Board held a joint public hearing on March 13, in Seattle, Washington to receive public testimony on the regulatory proposals. A hearing summary and a list of BS/AI King Crab proposals are provided as Items D-3(a) and (b).

During February 9-12, 1982, the NPFMC king crab delegation met with the NMFS plan review staff in Washington, D.C. for a "walk-through" of the BS/AI King Crab FMP sent to NMFS in December, 1981. The purpose of the meeting was to answer questions from the plan review staff about the mechanics of the fishery and the proposed plan and to agree on the contents of a finished framework document. The meeting was very successful. The deficiencies initially noted by the plan review staff were eliminated by explanation of the management system and were further helped by the addition of clarifying language in critical areas. It was the consensus of the group that the changes made to the text of the plan did not affect any substantive portions of the FMP or reflect any changes in policy. The FMP and the RIR are currently in the Council offices undergoing final improvements prior to resubmission to the Secretary for review.

The NEPA 45-day comment period on the BS/AI King Crab DEIS ended on March 9, 1982. A large package of comments were received and the staff is currently working on the necessary responses. It is anticipated that the FEIS will be completed by the end of April, 1982.

On January 19, a "Fishermen's Conference" was held in Seattle to obtain fishermen's ideas for the crab observer program. In attendance were Council members and staff, ADF&G and NWAFC biologists, and crab fishermen. The workgroup reviewed the four objectives as presented in the observer program proposal and determined that only one is truly needed. The program objective will be to determine the composition of the catch, with sex, size frequency, fecundity, and discard information. It was concluded that the previous objectives (estimates of handling mortality, gear evaluation, and effects at long-term pot storage) might be better met through an expanded dockside/logbook survey. ADF&G is currently working on the expansion of these programs. Funding for the crab observer program has been tentatively approved by the Assistant Administrator.

At the request of Richard Goldsmith, Executive Director of the North Pacific Fishing Vessel Owner's Association, a copy of his letter to Mil Zahn, Executive Director of the Alaska Board of Fisheries, dated November 19, 1981 is included as Item D-3(c).

SUMMARY: COUNCIL/BOARD OF FISHERIES JOINT PUBLIC HEARING ON THE
PROPOSED KING CRAB REGULATIONS FOR THE 1982-83 FISHERY.

Seattle, Washington
March 13, 1982

In accordance with the provisions of the Joint Statement of Principles between the North Pacific Fishery Management Council and the Alaska Board of Fisheries for management of domestic king crab fisheries in the Bering Sea and Aleutians, the Council and Board conducted their first joint public hearing outside Alaska on Saturday, March 13, 1982 in Seattle. The hearing was chaired by Nick Szabo, with Board members Jim Beaton, Jimmy Huntington, Herman Schroeder, Harry Sunberg, and Council members Clem Tillion, Harold Lokken, Bob McVey, Don Bevan, Gene DiDonato, and Bart Eaton in attendance. Support staff present were Mil Zahn and Kris Hauschild, ABOF, Jim Branson, Clarence Pautzke, Steve Davis, and Judy Willoughby, NPFMC, Fred Gaffney, ADF&G, Jerry Reeves and Ray Baglin, NMFS, and Cass Parsons, Alaska Governor's Office.

The hearing convened at 9:00 a.m. with about twenty members of the public in attendance. Synopses of individual testimony are given below.

Richard Goldsmith; North Pacific Fishing Vessel Owner's Association, Seattle, presented his association's support and opposition to a variety of proposals currently before the Board and Council. His testimony focused primarily on proposals concerning season dates, harvest guidelines, registration areas, and pot storage. His association supports an earlier season opening date in Norton Sound (Proposal No. 71) to allow harvest of crab prior to molting, a later season opening date for the Dutch Harbor and Bristol Bay areas (Nos. 59, 66) to improve recovery, the changing of Bristol Bay to a non-exclusive registration area (No. 63), and for random pot storage (No. 68). He opposed the Bristol Bay harvest guideline as proposed by ADF&G (No. 67) as being too low and the proposed elimination of all in-water pot storage around Dutch Harbor and the Pribilofs (Nos. 61, 87). In regards to Proposal Nos. 61 and 87, Mr. Goldsmith mentioned that his Association is attempting to meet with the conflicting user-groups in order to find a solution that is acceptable to all.

Terry Baker, Baker Marine Management Services, Seattle, testified in opposition to the Proposal No. 71 for an earlier Norton Sound season opening. He cited the problems associated with soft-shelled crab earlier in the year and the lack of processors in the area, making price bargaining more difficult. He supported the proposal for a delayed season opening in Bristol Bay and the redesignation of this area as non-exclusive.

Mr. Baker also commented on the current procedure for vessel licensing. He felt it was unfair that fishermen must have their licenses validated in Juneau for a given registration area. Mr. Baker suggested that it might be easier if licenses were validated during tank inspection, thus providing some last minute flexibility to the fishermen when deciding what registration area to fish.

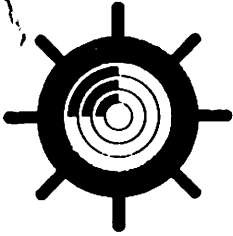
Richard White, Universal Seafoods, Seattle, supported the proposed delay in season opening for the Dutch Harbor, Bristol Bay, and Pribilof Island areas (Nos. 59, 66, 70). He felt that with the drastic decline in the crab resource, crab should only be harvested at a time when the quality of the crab is very high and at a time when deadloss can be minimized.

Dennis Peterson, Ocean Spray Seafoods, Seattle, testified in favor for the Council's Ad Hoc Crab Pot Storage Committee's proposal for a new pot storage area in Bristol Bay (No. 68). He supports the new area since it would eliminate stored pot losses to foreign trawlers.

Mr. Peterson opposed the proposal for a later season opening date in Bristol Bay, citing bad weather later in the season as a cause for increases in accidents and crab deadloss.

ALASKA BOARD OF FISHERIES KING CRAB PROPOSALS

<u>Proposal No.</u>	<u>Topic</u>	<u>Author</u>
59	season change - Dutch Harbor	public
60	guideline harvest change - Dutch Harbor	public
61	eliminate water storage of pots - Dutch Harbor	public
62	season change - Adak	public
63	make Bristol Bay non-exclusive	public
65	season change - Bristol Bay	public
66	season change - Bristol Bay	public
67	guideline harvest change - Bristol Bay	staff
68	change pot storage in Bristol Bay	ours/public
69	re-describe Norton Sound district	staff
70	season change - Pribilof	public
71	season change - Northern district of Bering Sea	public
72	close Norton Sound section	public
73	close summer season in Norton Sound section	public
74	change guideline harvest Bering Sea (blue KC)	staff
75	change guideline harvest - Northern district	staff
76	Bering Sea size limits (2)	staff
87	prohibit water storage of pots near Pribilofs	public
88	regulations to prevent harvest and processing of sublegals by catcher-processors	public
96	statewide- - 12 noon opening	staff
97	change in registration requirements	staff
98	removal of 72 hour pot storage after season	staff
99	statewide - gear storage on land only	public
100	time to apply for permit for crabs when vessel sinks	staff
101	provide for the use of other numbers on KC pot buoys other than vessel number	public

**North Pacific
Fishing Vessel
Owners' Association**

November 19, 1981

Mil Zahn
Executive Director
Board of Fisheries
Subport Building
Juneau, Alaska 99801

Dear Mr. Zahn:

Your letter of October 7, 1981 (copy attached), in which the Board of Fisheries formally rejected an industry request to allow the Bristol Bay king crab fishery to continue until it became uneconomical for the fleet to fish, implicitly raises some serious concerns about the present and future management of the Bering Sea and Aleutian Islands' king crab fisheries. Although not stated in your letter, the issue central to the Board's rejection of this request was the fishery exploitation rate. In its choice of an exploitation rate and its subsequent failure to justify this selection in writing, the Board breached agreements it had made with the North Pacific Fishery Management Council. The Association is asking that the Board thoroughly explain these violations.

Last spring, the Board made a commitment to the North Pacific Council that it would follow the Joint Statement of Principles and the Framework in managing the king crab fisheries of the Bering Sea and Aleutian Islands. It was due to the Board's professed adherence to the provisions of these documents that the Council (1) made a finding that the 1981 king crab fisheries for these areas were being effectively managed by the State of Alaska; and (2) proposed in its Bering Sea/Aleutian Islands King Crab Fishery Management Plan that the federal government delegate its rulemaking powers for implementing this plan to the Board.

During consideration of the industry request in September, however, the Board completely disregarded the provisions of the Framework and established an exploitation rate for the Bristol Bay fishery lower than required by that document. And after the Board altered the exploitation rate set out in the Framework, it ignored the mandate of the Joint Statement for a written statement explaining its action; in no way can your letter of October 7 be construed as meeting that requirement. These violations of the Framework and Joint Statement are substantial: the deviation from the Framework's exploitation rate may have cost the fleet at least 18 million dollars in lost revenues. Also,

the violations clearly demonstrate that the Board does not intend to honor its commitments to the Council and it should not be delegated any federal rulemaking authority for the king crab fisheries.

The Framework agreed to by the Board sets out a procedure for determining the allowable biological catch (ABC) for the Bristol Bay fishery. According to this document,

"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." (emphasis added)

Information provided to your staff by Dr. Jerry Reeves of the National Marine Fisheries Service showed that a 0.8 exploitation rate would achieve the highest of these catches for the 1981 fishery in Bristol Bay. (Dr. Reeves only calculated catches at exploitation rates up to 0.8. Theoretically, he could have looked at exploitation rates as high as 1.0.) Dr. Reeves also stated that almost 100% of the crabs 6-1/2 inches and larger could be harvested without hurting the future reproductive potential of these stocks. Yet the Board ignored this information (and the Framework's mandate) and directed its staff to go to a lower (0.6) exploitation rate. This action also flew in the face of the written statement which the Board issued to the public in March: "the Board directed the Department [Alaska Department of Fish and Game] to manage the fishery in so far as possible to achieve the ABC."

The Framework also states

"The OY [Optimum Yield] will equal the ABC unless there is social, economic or ecological rationale [sic] for harvesting more or less than the ABC in order to achieve management objectives."

Since the Framework points out that ABC is based on estimates of environmental and ecological effects as well as stock abundances and reproductive success, the only considerations which the Board should have taken into account in setting a harvest above or below the ABC were social and economic factors. But in its selection of a 0.6 exploitation rate which results in a harvest below ABC, it appears from your October 7 letter that the Board's primary concern was the decline in the king crab stocks, a factor already considered by Dr. Reeves in making his ABC analyses.

Compliance with the Framework is just one term of the Joint Statement by which the Board agreed to abide. Another provision is the requirement that the Board issue a written

statement explaining a regulation which it has adopted. The Board has failed to do this for its selection of a 0.6 exploitation rate. While one may argue this Board action was not a regulation per se, this contention is specious. The Board's deviation from the Framework had the same effect as a regulation: it limited the total amount of crab which the fleet could harvest. Nor did the Board's action qualify as an emergency regulation, thus relieving the Board from the responsibility of a written statement. Time was not running out when the Board's decision on an exploitation rate was made on the 10th of September; the season opened on that day and was likely to remain open for at least five weeks. During that period the Board could have issued a written statement justifying its selection of a 0.6 rate.

The requirement for the Board to issue a written statement to explain its actions has a dual purpose. By developing a rationale and buttressing it with data, the Board protects itself against legal claims that it is acting in an arbitrary and capricious manner. And through an awareness and understanding of the Board's motives, the public is more likely to obey the Board's dictates. In essence, a written statement can bring credibility to the Board's regulatory regime. However, the only explanation offered in your letter for a denial of our request (and implicitly for the selection of a 0.6 exploitation rate) is "stock levels have significantly declined" and "[g]iven this situation the Board reasoned that it would be in appropriate [sic] to venture into a new and more liberalized harvesting strategy such as the one you [industry] proposed." In addition, your letter provides no data to substantiate the Board's actions. While we appreciate your offer to let us review tapes of the Board's proceedings in September, the burden is on the Board to justify its actions; it is not the public's responsibility to prove or disprove the validity of a Board decision.

The Board's deviations from the Framework and Joint Statement at its September meeting are not the first instances when the Board has ignored the provisions of these documents. Attached are excerpts from letters which the Association has sent to the North Pacific Council detailing repeated breaches during the short time that the Board has agreed to comply with the terms of Joint Statement and Framework. Taken together, these violations indicate a conscious disregard of the agreements the Board has said it would honor.

Because the Board is a public body, the public is entitled to have a considerably clearer understanding of the bases for the Board's actions than presently exists. We await further clarification of these bases.

Sincerely,



Richard J. Goldsmith
Executive Director

Attachments:

- (1) Letter from Mil Zahn to Richard J. Goldsmith, dated October 7, 1981
- (2) Excerpts, letter from Richard J. Goldsmith to Jim H. Branson, Executive Director, North Pacific Fishery Management Council, dated May 18, 1981
- (3) Excerpts, letter from Richard J. Goldsmith to Jim H. Branson, dated May 28, 1981
- (4) Excerpts, letter from Richard J. Goldsmith to Clement V. Tillion, Chairman, North Pacific Council, dated September 21, 1981

cc: Robert Alverson, Alaska Marketing Association
Jim H. Branson, North Pacific Council
Congressman John Breaux
John Gissberg, Alaska Department of Law
William Gordon, National Marine Fisheries Service
Jay Johnson, NOAA, Office of the General Counsel
Richard Pace, Universal Seafoods
Senator Bob Packwood
Robert Resoff, Alaska Crab Institute
Michael Rubenstein, NOAA, Office of the General Counsel
Lucy Sloan, National Federation of Fishermen
Washington Congressional Delegation
William Woods, Pan Alaska Fisheries

DEPARTMENT OF FISH AND GAME
BOARD OF FISHERIES/BOARD OF GAME

October 7, 1981

SUPPORT BUILDING
JUNEAU, ALASKA 99801
PHONE: (907) 465-4108

Richard J. Goldsmith
Executive Director
North Pacific Fishing
Vessel Owners' Association
Building C-3, Room 218
Fishermens Terminal
Seattle, WA 98119

Dear Mr. Goldsmith:

At the Board of Fisheries meeting in Kodiak, September 9, 1981, you presented the Board with a letter requesting an extension of the 1981 Bristol Bay king crab season.

The Board accepted your letter, signed jointly by representatives of the Alaska Crab Institute, the Alaska Marketing Association and the North Pacific Fishing Vessel Owners Association, as a petition under AS 44.62.220. The Board discussed and acted upon the petition during its evening meeting of September 10. As I recall, you were present during the morning meeting of September 11 when the Board Chairman briefly summarized the Board's reasons for denying your petition. In essence, the Board reaffirmed the management strategy it had adopted during its spring 1981 meeting. That strategy, as you remember, considerably liberalized the harvest of King crab in the Bering Sea. The Board took this action based upon two factors: (1) above average populations of King crab and (2) scientific advice concerning the reproductive requirements of the stocks. Recent information, however, indicates that stock levels have significantly declined. Given this situation the Board reasoned that it would be in appropriate to venture into a new and more liberalized harvesting strategy such as the one you proposed. Board proceedings are on tape if you wish to review any of the discussions.

Pursuant to AS 44.62.230, this letter confirms the Board of Fisheries action that denied your petition for an extended crab season.

Sincerely,


Mil Zahn
Executive Director
Boards of Fisheries and Game

Jim H. Branson
May 18, 1981

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need for a Council fishery management plan since the resource is outside state waters and therefore, not subject to the state's fishery management authority.) The Association finds your statement on behalf of the Council both troubling and puzzling. The Western Alaska area is singled out for the proposed scheme due to its large non-resident fishery. Yet, the Joint Statement of Principles states that the Framework "shall not discriminate between residents and non-residents of the State of Alaska." Limiting the proposed scheme to the area where there is the "greatest proportion of non-Alaskan participants" is, in itself, a form of discrimination.

In addition, limiting the proposed scheme to the Western Alaska area appears to violate MFCMA National Standards 4 (no discrimination between residents of different states) and 3 (to the extent practicable, an individual stock shall be managed as a unit throughout its range, and interrelated stocks shall be managed as a unit or in close coordination).

The Board Already Has Breached Its Agreement With The Council

In addition to the Board's failure to provide effective management in a manner that is consistent with the MFCMA, the Board has not abided by the Joint Statement and Framework in establishing regulations for the 1981 king crab fishery in Western Alaska. At the joint meeting in March, the Board agreed to conform to the procedures and guidelines laid out in these documents even though the proposed scheme had not received final approval from the Council. As pointed out in

the Association's comments (below) on these documents, the Board has breached this agreement.

Furthermore, the Board inserted an objective in the Framework which was not agreed upon by the Council at the joint March meeting--subsistence use. The Board then pointed to this objective as justification for its closure to commercial fisheries of an area in Norton Sound. This closure is an allocation which obviously does not comport with MFCMA National Standards 4 and 5. Yet the Board agreed that its regulations would meet all the National Standards.

The Council also has failed to comply with the terms of the Joint Statement. During the 45-day period set out in the Joint Statement for commenting on the effectiveness of Alaska management, the Council obligated itself to "hold public hearings on this issue at places and times that are likely to facilitate attendance by such persons and their representatives." There have been no such Council hearings.

The Secretary Determines Consistency With The MFCMA

Under the MFCMA, determinations of consistency with the Act are a two-tiered process: the Council develops a plan which one assumes is consistent with the MFCMA; the Secretary of Commerce then reviews the plan to ascertain whether it does meet the National Standards. The Joint Statement eliminates this process. In your May 1, 1981 letter to Congressman Studts and in ADF&G Commissioner Skoog's letters to Senator Hatfield

and Optimum Yield are contingent on both minimum size and exploitation rates. Furthermore, the Board has displayed a propensity for establishing second seasons on larger, post-recruit crabs--a practice with which the Association disagrees and has already commented on. Therefore, the management body should be required to establish criteria for selecting minimum sizes and to justify its decisions on this management tool.

Criteria also should be set out for the selection of exploitation rates.

THE WRITTEN STATEMENT OF THE BOARD OF FISHERIES'
DECISIONS (DECISION DOCUMENT)

Norton Sound Fishery

1. The Board has failed to clearly indicate how the acceptable biological catch was determined. The Decision Document only states that the "procedure outlined in the Management Framework" was used. What data were used to arrive at the 1981 population of legal sized males? What is the legal minimum size of crab for this area and how was it determined? By adopting a conservative exploitation rate (presumably .4), how many pounds of large post-recruit crabs will be lost to the fishery due to natural mortality?

2. The Decision Document states that there is a need to protect a near-shore subsistence fishery. Where are the data on this subsistence fishery? Why is there a need to protect it? The Framework states that subsistence 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." The Board has failed to provide data showing that the sustained yield of the stock is threatened, thus demonstrating that subsistence use justifies a priority. Giving subsistence use a priority is an allocation. How is this allocation consistent with National Standards 4 and 5 of the MFCMA?

3. The Decision Document is inconsistent. It defends the use of a conservative exploitation rate to protect a near-shore subsistence fishery. The Board then closes a 15 mile offshore area to commercial fishing to "further enhance subsistence fishing...." (emphasis added) Again, this closure is an allocation, how is it consistent with the MFCMA's National Standards? Also, Alaska's legal fishery management authority, except for resident-owned vessels, does not extend beyond three miles. How can the State enforce this closure against non-resident vessels?

4. Why was a July 15 through September 3 closure selected?

Adak Fishery

1. What are the present stock levels and what were the "former depressed levels."

2. The Framework listed four factors (beyond biological considerations) to be considered in establishing fishing seasons. It appears from the Decision Document that the Board failed to look at these factors. Why?

Bering Sea Fishery

1. Unless one is familiar with the vessel tank inspection requirements, the explanation offered on why the Pribilof opening date was changed is rather confusing. Also the document should state what enforcement problem resulted from an earlier opening of the Pribilof fishery relative to the Bristol Bay fishery.

2. Enforceability of season openings is not listed as a Framework factor for changing seasons. Yet the season opening in the Pribilof fishery is based entirely on this consideration. This violates the Framework.

3. The document should relate what the enforcement problem was that required the closure of the Pribilof red crab fishery at the same time as the Bristol Bay fishery.

4. Dr. Alverson, in his study, concluded that split seasons and different size limits may increase sorting mortality and generate unnecessary fuel costs. Did the Board consider these factors in deciding to increase the Pribilof size to 7-1/2 inches? In changing from 7 to 7-1/2 inches, how many pounds will fishermen be unable to harvest due to natural mortality?

5. How does raising the size to 7-1/2 inches alleviate "enforcement problems associated with possible illegal fishing in the Bristol Bay area"?

6. As the Association indicated in its comments on the Framework (above), there is a need to establish criteria for setting minimum sizes.

Bristol Bay Fishery

1. Where are the data which show that "stabilization" of the number of boats in the Bristol Bay fishery is due in part to the Board's designation of this area as "exclusive"? What are the other reasons (and where are the supporting data) for this leveling off of "effort." (According to the Decision Document, "Effort... stabilized during the 1979 and 1980 seasons at 236 vessels." However, if one defines "effort" as the number of pots hauled, there was an 80% increase in effort from the 1979 season (315,226 pots) to the 1980 season (567,292 pots). See page 153, "Westward Region Shellfish Report to the Alaska Board of Fisheries, March 1981.")

2. What are the current "high stock levels" for Bristol Bay?

3. In rejecting the proposal for a new gear storage area, the Board failed to make its decision on the Framework criteria for gear placement and storage. The document shows that the Board's decision was based primarily on the public's desire for a fair and equitable start. However "fair starts" are not a factor set forth in the Framework for establishing pot storage and gear placement regulations. What constitutes a "fair and equitable" start? Is it possible to achieve and if so, at what costs? Who is this "public" that desires a fair and equitable start?

Another factor in the Board's decision to reject the proposed storage area was the costs of determining if pots are properly stored. However the Decision Document does

not specify what these costs are. Why should these costs be any greater than the costs in checking pots in the present area? The Board also neglected to ascertain whether the costs of pot checking are outweighed by the benefits.

A final consideration in the Board's rejection of the proposed pot storage area appears to be that the area is in in a major production ground. However, there are no data in the document to show that storage there would have a biological effect on crab. The document does mention that the Board received testimony "expressing concern for biological harm by gear stored improperly in the major production areas." But what is this harm and where are the data offered to support these contentions? One might argue that the Decision Document notes that "the Department expressed concern that the proposed storage area was in an area which produced approximately half of the 1980 season harvest." But what was the basis of the Department's concern - biological impact on fishery resources, fair starts?

The Board failed to consider the costs to industry of gear storage in the present area. This is a factor which the Framework requires be analyzed before a decision on storage areas is made.

The Decision Document needs to articulate "the obvious enforcement problems" with the proposed storage area.

4. The Board failed to consider all the criteria outlined in the Framework for designating an area as "exclusive" or "non-exclusive." (The Association has also pointed out in

its comments on the Framework that the criteria heavily favor Alaskans.)

The Decision Document makes it clear that retention of the exclusive designation for Bristol Bay was an allocation decision: the Board decided that large vessels should fish Bristol Bay and small vessels should have the Dutch Harbor area available to them. (It is, of course, also interesting to note that of the vessels harvesting king crab in Western Alaska, non-residents generally own the large vessels while residents own the majority of small vessels.) Where is the determination by the Board that this allocation conforms to National Standards 4 and 5 by (a) being non-discriminatory; (b) being "fair and equitable;" (c) promoting conservation; (d) promoting efficiency in the use of fishery resources; and (e) having other purposes besides economic allocation?

The Decision Document did not accurately reflect the position of those who proposed the return of the Bristol Bay area to a non-exclusive status. The proposers stated that exclusive area registration was an unlawful exercise of the state's police powers because this practice is designed to protect local interests. They pointed out that area registration has led to the development of large fleets in exclusive areas and is not beneficial to the long-term health of the fishery. They also emphasized that no conservation purpose is served by area registration: the guideline harvest level, combined with size limits and gear restrictions, adequately protect the resource.

The document notes "[t]he Board received testimony supporting the status quo." However, the document does not set forth the reasons these people gave for keeping Bristol Bay exclusive.

What is meant by the statement "Management can also be more precise providing fuller utilization of available surpluses when fishing effort is not so great that harvests are taken in a very abbreviated time"?

BOARD OF FISHERIES POLICY ON KING CRAB RESOURCE MANAGEMENT

Most of the Association's concerns about Alaska's king crab resource management policy and its consistency with the MFCMA have already been expressed in this letter, its previously submitted comments, and Dr. Alverson's study. (In this letter, attention especially should be redirected to pages 9-11, 19, 25-26.)

The Council has yet to do an analysis to ascertain if this policy comports with the MFCMA's National Standards and policies.

Has there been a study done to determine if the Board has, in fact, been achieving the goals it has set for itself in this policy?

Fishery management must not only take into account the resource, but also the industry. What has been the Board's policy for fostering industry development?

THE STATE OF ALASKA'S KING CRAB REGULATIONS

It is interesting to note that the regulations cover not only state waters (within three miles of shore), but also "an

Jim H. BRANSON
May 28, 1981

Statements in Commissioner Skoog's letter indicate that state management not only favors small vessels (which are owned primarily by Alaskans), but also shore-based processors. How do these biases comport with claims that the proposed management scheme will be even-handed and consistent with the National Standards of the Magnuson Fishery Conservation and Management Act?

It appears from Commissioner Skoog's letter that the Framework criteria were not the primary reasons for establishing the season opening for the Bering Sea. This violates the Framework and the Joint Statement of Principles. Furthermore, when one of the Framework criteria for season openings was set down as being "the timing of season openings for individual areas relative to one another," the Association assumed that the criterion meant the timing of an area opening relative only to other areas within the Western Alaska region. As evidenced by Commissioner Skoog's letter which stresses the importance of the Bering Sea (Bristol Bay) opening upon areas outside Western Alaska, this assumption was erroneous. The Framework should be amended to clarify this criterion. Again, if it is proposed that the Western Alaska area be managed differently from other king crab areas of the state, why are the effects on fisheries in other areas considered when making management decisions for the Western Alaska king crab fishery?

FEDERAL COURT DECISION REQUIRING
SUFFICIENT DATA IN A FISHERY
MANAGEMENT PLAN

The second document accompanying this letter is a recent decision by the U.S. Court of Appeals, Ninth Circuit, concerning data that is required to be contained in a fishery management plan. On May 18, 1981, this court ruled in Washington Trollers Association v. Kreps (No. 79-4240) that to carry out the purposes and policies of the Magnuson Act for meaningful public comment, a fishery management plan's summary of data used in specifying a fishery's present and future condition, maximum sustainable yield and Optimum Yield "must...provide information sufficient to enable an interested or affected party to comment intelligently on those specifications." The court cited Portland Cement Association v. Ruckelshaus when it stated

"It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that [to a] critical degree, is known only to the agency.'" 486 F.2d 375,393 (D.C.Cir.1973), cert. denied, 417 U.S. 921 (1974).

The Association believes that the court's holding is applicable to the Council's proposed management scheme for the Western Alaska king crab fishery. As the Association indicated in its

Jim H. Branson
May 28, 1981

Page 4

May 18, 1981 comments on the proposed scheme, the document which contains the justifications for regulations governing the Western Alaska king crab fishery failed to provide data on which the Board based its decisions. Those comments also pointed out that the Joint Statement's procedures are inadequate for allowing meaningful public comment.

SENATOR GORTON'S LETTER TO COMMISSIONER SKOOG

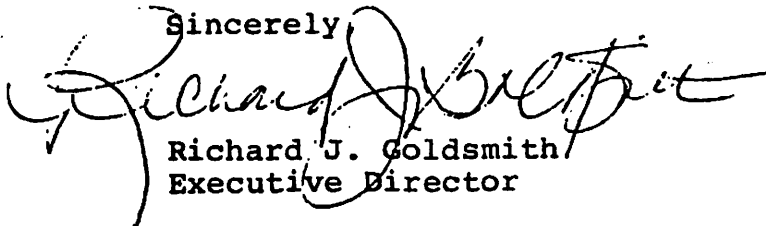
A May 20, 1981 letter from U.S. Senator Slade Gorton to Commissioner Skoog is the third document which is offered to the Council. This letter reemphasizes that neither the proposed management scheme nor Alaskan state management is consistent with the requirements of the MFCMA."

LETTER FROM THE FISHERMEN'S MARKETING ASSOCIATION
OF EUREKA, CALIFORNIA TO THE SECRETARY OF COMMERCE

The final document is a May 19, 1981 letter from Peter Leipzig, general manager of the Fishermen's Marketing Association, Inc. of Eureka, California to Malcolm Baldrige, the Secretary of Commerce. Mr. Leipzig urges that the Secretary oppose the course of action that the Council is taking with regard to the proposed management scheme for the king crab fishery off Alaska.

The Association hopes that these additional documents and comments will assist the Council in making its decisions on management of the Alaska king crab fishery.

Sincerely,



Richard J. Goldsmith
Executive Director

Enclosures

The Board Has Not Followed The Framework

In view of the failures of the Board of Fisheries to follow the Framework's criteria for promulgating regulations for the Bering Sea king crab fishery, the Association is at a loss to understand why the Council wishes the Board to continue to have the central role in managing this fishery. As we indicated in our May 18, 1981 letter to the Council, the Board at its March meeting breached the Joint Statement of Principles by ignoring the regulation setting standards articulated in the Framework. More recently, the Board at its September meeting in Kodiak again ignored the Framework and set an exploitation rate for the Bristol Bay fishery which was far below that required by the plan. Both times the Council acquiesced to the Board. This acquiescence by the Council does nothing to convince us that the Council will be the dominant management body for fisheries in the Fishery Conservation Zone.

In addition, the Board has not been held accountable for its refusal to reconsider the opening date for the 1981 Bristol Bay king crab fishery and its almost simultaneous agreement to reopen discussion on a second season in Kodiak for 7-1/2 inch crab. Such actions by the Board appear, at best, to be arbitrary, and once again, reinforce the conviction that the Board is not really concerned about the interests of non-residents.

The Board Cannot Be The Primary Regulatory Body

The FMP narrative describes the proposed system of implementation

Illegal Fishing Is A Civil Not Criminal Offense

The Council should also be aware that Congress, in the MFCMA, purposely characterized illegal fishing activities by domestic fishermen as civil offenses; generally, criminal sanctions are reserved only for actions directed against officers trying to enforce the Magnuson Act. If the Council's proposal to delegate regulatory powers to the State were accepted, Congressional intent would be thwarted: in Alaska, violations of the State's fishing regulations are misdemeanors and offenders are subject to criminal penalties.

The Council Has Not Carefully Examined The State's Regulations

With the exception of a few regulatory proposals which were under consideration by the Board this year, the Council has yet to ask the Board to test its current king crab regulations against the criteria set forth in the Framework Plan. Nor has the Council, on its own, scrutinized these regulations to determine if they conform to the National Standards embodied in the Magnuson Act.

By its inaction, the Council seems to be urging the wholesale adoption of the State's regulations for the king crab fishery—regulations primarily established at the behest of Alaskans for benefit of Alaskans. We are troubled by the Council's failure to carefully examine the rationales behind these regulations. While Congress, in the MFCMA, provided for the Councils to "incorporate.... the relevant fishery conservation and management measures of the coastal States nearest to the fishery" into their plans, it added

a caveat: that those management measures must be "consistent with the national standards, the other provisions of this Act, and any other applicable law."

SPECIFIC COMMENTS ON THE PLAN

Introduction

While in theory a "framework" fishery management plan would enable managers to respond more quickly to changing conditions in a fishery, this FMP does little more than give the Board of Fisheries license to do whatever it wants, whenever it wants. The FMP fails to indicate those conditions which must exist in the fishery before the regulatory body can even consider imposing certain management measures. Furthermore, the FMP does not expressly and emphatically state that the criteria to be examined in setting regulations are the only criteria to which the Board can direct its attention. Nor does the FMP assign a priority to each criterion. For these reasons, the FMP—contrary to the Introduction's assertions—does not provide "clear guidance to the on-going regulatory process...." and "...eliminate duplications of bureaucratic functions...." In fact, if one assumes that a properly constructed framework plan is a valid approach to managing a fishery, then the proposed system is more costly and burdensome than the MFCMA regulatory process. Once a FMP is approved and initially implemented, further promulgations of regulations under the MFCMA consist of three steps: notice of proposed rulemaking, a period of public comment, and publication of final regulations. Since the Secretary promulgates

REPORT OF THE KING CRAB DELEGATION
Washington, D.C.
February 9-11, 1982

A delegation of North Pacific Fishery Management Council members and staff, NMFS Central Office and Alaska Region personnel, and representatives from the State of Alaska met February 9-11, 1982 in Washington, D.C. to review the Bering Sea/Aleutian Islands King Crab Fishery Management Plan. Participants and observers at the meeting are listed below:

Jim Branson, NPFMC Executive Director, Meeting Chairman
Clem Tillion, NPFMC Chairman
Don Bevan, NPFMC Member
Don Collinsworth, NPFMC Member and Deputy Commissioner, ADF&G
Nick Szabo, Alaska Board of Fisheries Chairman
Jerry Reeves, NMFS
Phil Chitwood, NMFS
Clem Bribitzer, NMFS
Roland Finch, NMFS
Pat Travers, NOAA General Counsel, Alaska Region
Jay Johnson, NOAA General Counsel
Jim Brennan, NOAA General Counsel
Robert Gorrell, NMFS
Fred Gaffney, ADF&G
Jack Lechner, ADF&G
John Gissberg, State of Alaska, Attorney General's Office
Mike Rubenstein, State of Alaska
Bob Siegel, NMFS
Peter Fricke, NMFS
Donna Turgeon, NMFS
Bob Sullivan, NMFS
Dick Schaeffer, NMFS
Tom Begford, NMFS
Mark Holliday, NMFS
Mary Thompson, NMFS
Steve Davis, NPFMC Staff
Peggy McCalment, NPFMC Staff

The delegation was welcomed by Roland Finch, Acting Director of the Office of Resource Conservation and Management, NMFS. The meeting was chaired by Jim Branson.

The purpose of the meeting was (1) to review the Bering Sea/Aleutian Island King Crab Fishery Management Plan sent to NMFS in December, 1981; (2) to answer questions from the plan review staff about the mechanics of the fishery and the proposed plan; and (3) to agree on the contents of a finished framework document.

Jim Branson reviewed the evolution of the plan, noting that the Council initially thought a plan was unnecessary, but that position met with opposition from the non-Alaskan participants in the fishery. The framework

plan emerged as something that would serve the interest of all participants in the fishery while allowing the State of Alaska to continue day-to-day management.

Steve Davis, Council staff plan coordinator, explained the format of the plan and contents of the attached appendices. He stressed the fact that the plan was designed to respond rapidly to changes in the fishery without the need for annual amendments.

Explanation of State Management System

Jack Lechner described the system developed by the State of Alaska for managing the king crab fishery which has enabled the State to increase exploitation rates while learning more about the species. Mr. Lechner explained how the exploitation rate is derived from population assessments made through State and NMFS surveys and how harvest guidelines and regulations are formulated. The State tabulates catches daily and publishes catch statistics weekly. Tag recovery programs are used to estimate the exploitation rates on particular stocks and CPUE data is used to compare trends of previous years' fisheries.

Nick Szabo and John Gissberg explained the State Board of Fisheries process for developing and implementing regulations under the Alaska Administrative Procedures Act. Any proposed change in regulations must be noticed to the public at least 30 days before Board action; any Board action does not become effective until 30 days after approval. The Board solicits proposals for changes in regulations from the public and its 56 local Fish and Game Advisory Committees and distributes all proposals to the public for review. Don Collinsworth noted that the State spends about \$1 million annually to operate the advisory committee system and over 700 persons serve on these committees statewide.

Although the Alaska Administrative Procedures Act does not require written findings following adoption of a regulation, the Board does publish them when an advisory committee's proposal is not accepted.

Nick Szabo explained that the Board's exchange with the public is the most extensive of any sector of the State system. The public has three opportunities to review every proposal before it is acted upon, and the State attempts to prepare written findings for all controversial issues. In addition, the State has agreed to publish a written finding for any regulation relating to the King Crab FMP, even though it may not be required by law.

Jim Branson noted that the Council shares in the Board's public process for fisheries of mutual interest, i.e., king and Tanner crab, troll salmon, and herring. The Board will hold its first public hearing outside the State of Alaska in March 1982 to accept testimony on State proposals for the 1982 king crab fishery. John Gissberg explained further that the Seattle-based fleet has always had the opportunity to submit proposals and that the Board will attempt to provide written findings for any of their proposals which are either adopted or rejected.

Clem Bribitzer asked if in-season adjustments are subject to the Administrative Procedures Act. John Gissberg explained that the APA allows for

emergency orders, through the Fish and Game Commissioner, to open and close seasons, adjust the size of the fishery, etc.

Delegation of Management Authority to the State of Alaska Under the Framework Concept

Jim Brennan, Deputy General Counsel for NOAA, said that the General Counsel's office feels that delegation of day-to-day management authority to the State is technically possible under the framework plan. There were some areas, however, which the General Counsel's office felt should be strengthened to withstand judicial review. He said that the General Counsel's office is pleased with the biological basis of the plan. After hearing Nick Szabo's and John Gissberg's explanation of the State regulatory process, he said he was comfortable that the public has ample opportunity to participate. Mr. Brennan suggested that the Board publish its agendas in the Federal Register to comply with Federal noticing requirements.

It was the consensus of the group that there are no major legal or policy considerations preventing delegation of day-to-day management authority to the State of Alaska.

Optimum Yield

Bob Siegel said that he was unsure how the draft FMP would comply with EO 12291 as currently written. He suggested that if the Council set a range for OY, (for example, 50-100 million pounds) and prepared a regulatory impact analysis for the upper and lower ends of the range and several points between, the FMP should comply with the Executive Order. Bob Sullivan added that an FMP without specified ranges creates an arbitrary, unclear regulatory authority.

Don Collinworth asked if using a formula to determine OY might be more advantageous than setting a range, as a formula could allow more easily for natural fluctuations in the stock. Jay Johnson said that OMB needs to be convinced that the Council has looked at the social and economic implications of its regulations. They want to be assured that fishermen will get the best deal possible considering economic, social, and other factors in relation to the condition of the resource.

Discussion continued on the determination of OY under the regulatory process of the State compared to Federal entities. Jay Johnson pointed out that the Board of Fisheries process looks at biological, ecological, economic, and social factors. The difference is in approach rather than procedure. The Board relies heavily on oral testimony whereas Federal requirements call for specific, written formats. The Board process does take into account the underlying factors required by NEPA. Mr. Johnson said that one thing that is missing in the FMP is the specified objective upon which the State bases its management regime, such as maximum dollar efficiency with minimum effort, maximum yield consistent with the biological needs of the resource, etc. OMB must be convinced that the State's management regime is not based totally on economics.

Peter Fricke suggested that the document include a set of criteria and resultant triggering mechanisms for examining the effects of certain regulations on fishermen in order to show that the basis for regulation is rational and fair.

Clem Bribitzer said there was probably enough socioeconomic data available in the Board's record of oral testimony to analyze the regulatory impacts to comply with the Regulatory Flexibility Act. He believed the Board and Council should provide more written justification for the effects of their regulations.

Don Bevan countered that while the MFCMA generally applies regulations to fisheries which are out of control or are trying something new on the fishing community, the same management system which has been in place for over 20 years in this fishery will remain in effect.

A workgroup assigned to further explore the derivation of optimum yield from ABC suggested that for areas where spawner-recruitment relationship cannot be determined, the OY should equal the ABC.

In response to the apparent need for an OY range in areas where increased biological information allows the determination of a spawner-recruitment relationship, the workgroup proposed using the estimated yields table on page 13 of the FMP to demonstrate the relationship of size limit and exploitation rate. Using the table, the upper limit of the OY range would equal the ABC, this being the yield obtained by using the highest exploitation rate applied to the smallest size limit while still providing maximum reproductive potential. The lower limit of the OY range would be the yield obtained from the lowest exploitation rate applied to the largest size limit. Although this range is quite large, it seemed to satisfy the concerns of the Central Office staff while still maintaining the plan's flexibility. Jay Johnson stressed the need for clearer explanation of how size limit changes are determined in the process.

The question of including subsistence requirements in the determination of OY was discussed at great length. It was concluded that the provisions of the plan do not apply to the subsistence or recreational fisheries. The group agreed that a sentence should be added to the section on subsistence, stating that the subsistence catch is negligible compared to the commercial fishery and no impact is anticipated.

The group agreed that the history of the fishery indicates that an exploitation rate of .4 to .6 has maintained the fecundity rate desired and that OY will be determined within those exploitation rates.

Management Unit

Clem Tillion explained that the management unit for the FMP contains only the Bering Sea and Aleutian Islands areas because those stocks are harvested primarily in the FCZ. Those westward stocks do not contribute to the Kodiak or Cook Inlet fisheries in any way.

Bob Gorrell outlined the issues raised for the existing management unit:

- Management unit (i.e., reasons for excluding Kodiak and Cook Inlet) needs better justification in terms of National Standard 3, part 2, National Standard 4, and the minority report.

- Expanded language on conservation and economic concerns may strengthen the case for limiting the management unit to the Bering Sea and Aleutians.
- Management unit is not defined consistently throughout the document.

The argument for the management unit presented in the FMP needs to be made stronger to survive judicial review.

Framework Nature

Major discussion of this aspect of the FMP is contained in the section, "Delegation of Management Authority to the State of Alaska."

Bob Siegel suggested that the RIR include several paragraphs of economic justification for the plan itself. This might include its applicability as an example of the "New Federalism", a discussion of the various dollar values of catches at several catch levels, and analysis of the impacts of the plan, if any, on vessels now in the fishery.

Registration Areas

Bob Gorrell said there was concern over the lack of specificity in how an individual applies for a specific area. Don Collinsworth explained that when a fisherman registers for a specific area, he "assigns" his own fishing unit. They pick it, they fish it. By decreasing effort in a given unit, the season can be spread out to make better use of smaller stocks or groups of stocks.

Nick Szabo commented that the Board rarely initiates regulatory changes on its own, but usually reacts to ADF&G or public proposals. He said that in the mid 1960's the Board repealed exclusive registration areas for the king crab fishery. It was the North Pacific Fishing Vessel Owners Association that proposed that the Board reinstitute exclusive registration in the king crab fishery, which was done, based on their request, in 1968.

The group agreed that the section on registration areas should be expanded to include a discussion of the "mechanical" advantages of registration in determining day-to-day management actions.

It was the consensus of the group that a list of criteria for designating exclusive and non-exclusive registration areas be included in the FMP, with additional explanation of districts within registration areas.

In reviewing the workgroup's proposed changes to this section, it was suggested that the FMP state that the Board will consider social and economic factors which may be involved before changing registration areas.

Fishing Seasons

Bob Gorrell cited potential problems with this section relating to National Standards 4 and 5. References in the document to "locally-based fleets" and "small vessels" raise real questions with the National Standards and should be eliminated whenever possible.

Other

Mark Holliday explained that the Paperwork Reduction Act calls for reduced information collection from the public. He said if the Council wishes to undertake any new data collection efforts, it must be approved through NOAA and OMB. He recommended that the Council not attempt to federalize State of Alaska reporting requirements, but state in the plan that Alaska's reporting requirements are consistent with the FMP.

Procedures for Plan Implementation

On pages 29-31 of the FMP, protocol for the roles of the Federal government (through the NMFS Regional Office and NPFMC) and the State of Alaska is presented in eight steps. Bob Gorrell cited several minor concerns with the protocol. He suggested that clarification be added to items 5 and 6, which describe the Regional Director's and Secretary's authority, to explain that the protocol applies in all instances, not only in emergency situations. Mr. Gorrell also suggested a change in the order of the eight steps, changing the existing number 4 to number 6; thus, existing number 5 would become number 4, and so on. Mr. Gorrell suggested that the language in this section be expanded to include the types of breach of agreement between the State and Council that would trigger the Secretary's direct involvement. He also suggested that a sentence be added on page 29 to reaffirm that the first set of implementing regulations for the framework will require full Secretarial review and approval.

Summary

Jim Branson said he felt that the deficiencies initially noted by the plan review staff had been alleviated by explanation and discussion of the management system and will be further helped by the addition of clarifying and/or expanded language in the critical areas. It was the consensus of the group that the changes made to the text of the plan do not affect any substantive portions of the FMP or reflect any changes in policy.

Roland Finch made the following observations of the review:

1. The RIR and the changes suggested are the responsibility of the Council and the NMFS Regional Office.
2. Two issues may still need more clarification, justification of the management unit and registration areas. He suggested that a paragraph be added saying that the Council initially considered a wider area for the management unit, but rejected the larger unit for specific, stated reasons.
3. The first set of regulations to implement the framework must be fairly comprehensive, somewhat a restatement of the plan, if they are to survive OMB review.
4. Language setting forth the factors considered in designating exclusive and non-exclusive registration areas should be further strengthened.
5. Justification for selecting one optimum yield over another needs further expansion -- a stated objective is needed.

Summary of Final Session with Assistant Administrator

Bill Gordon joined the group on Thursday morning, February 11, to discuss the NMFS position on the framework FMP and its approvability. Jim Branson reviewed the areas of concern needing additional or clarifying language and explained that the FMP has not changed in objective or policy. The group had:

1. Further developed guidelines for deriving OY from ABC;
2. Clarified and further justified the fishery management unit.
3. Expanded criteria for designation of exclusive and non-exclusive registration areas;
4. Agreed upon other language changes dealing with seasons, reporting requirements, etc., as suggested by the Plan Review staff.

Bill Gordon said that NMFS feels there can be mutual benefits from the King Crab Plan, primarily that it will be the first major step toward state/federal fisheries management systems. He urged the Council to pay close attention to the socioeconomic factors of the fishery, particularly in these next few, tough years for the U.S. fishing industry, and encouraged expansion of the socioeconomic data base wherever possible to achieve more responsive management for all fisheries of the North Pacific.