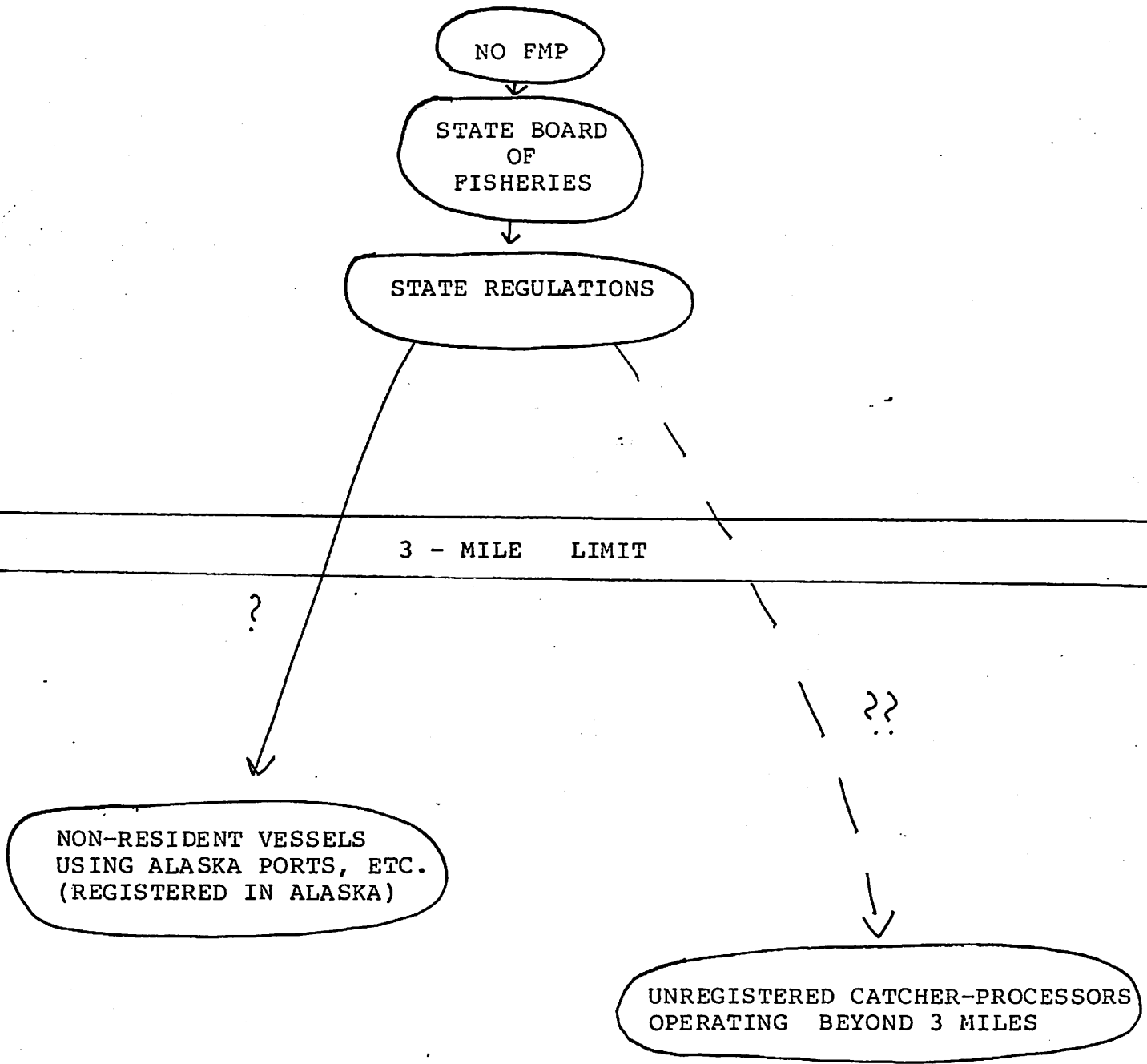
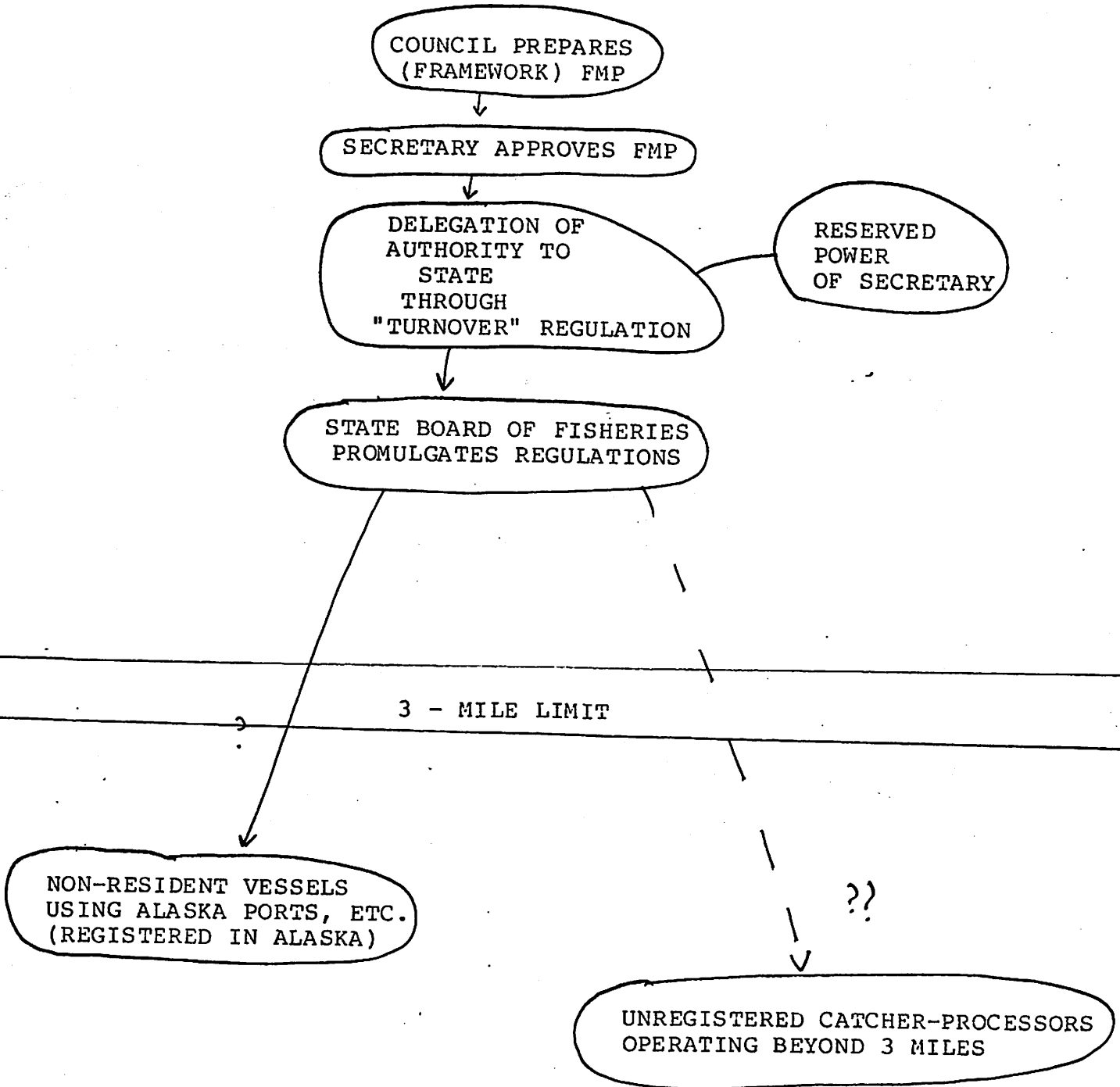


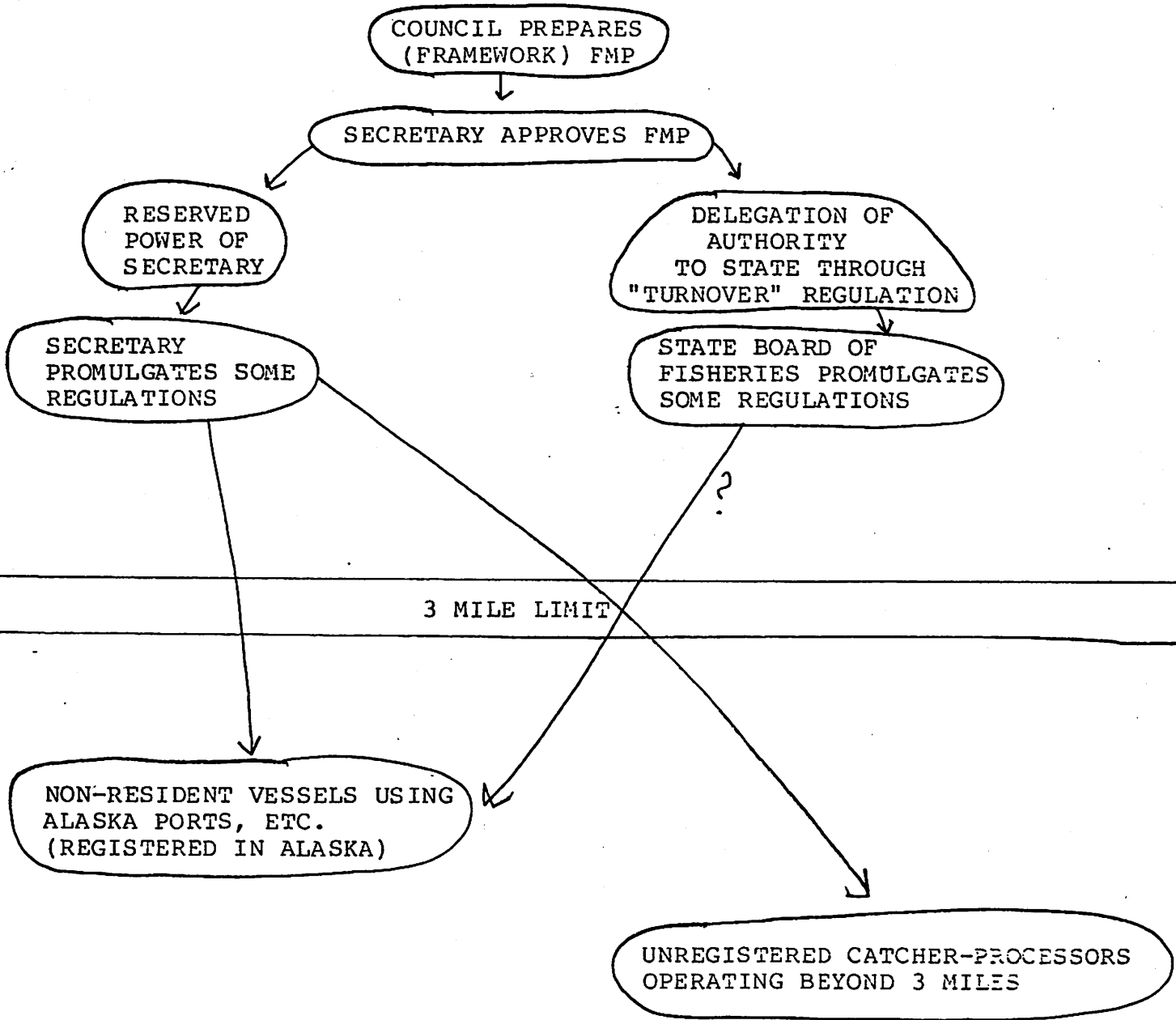
I. STATE REGULATION



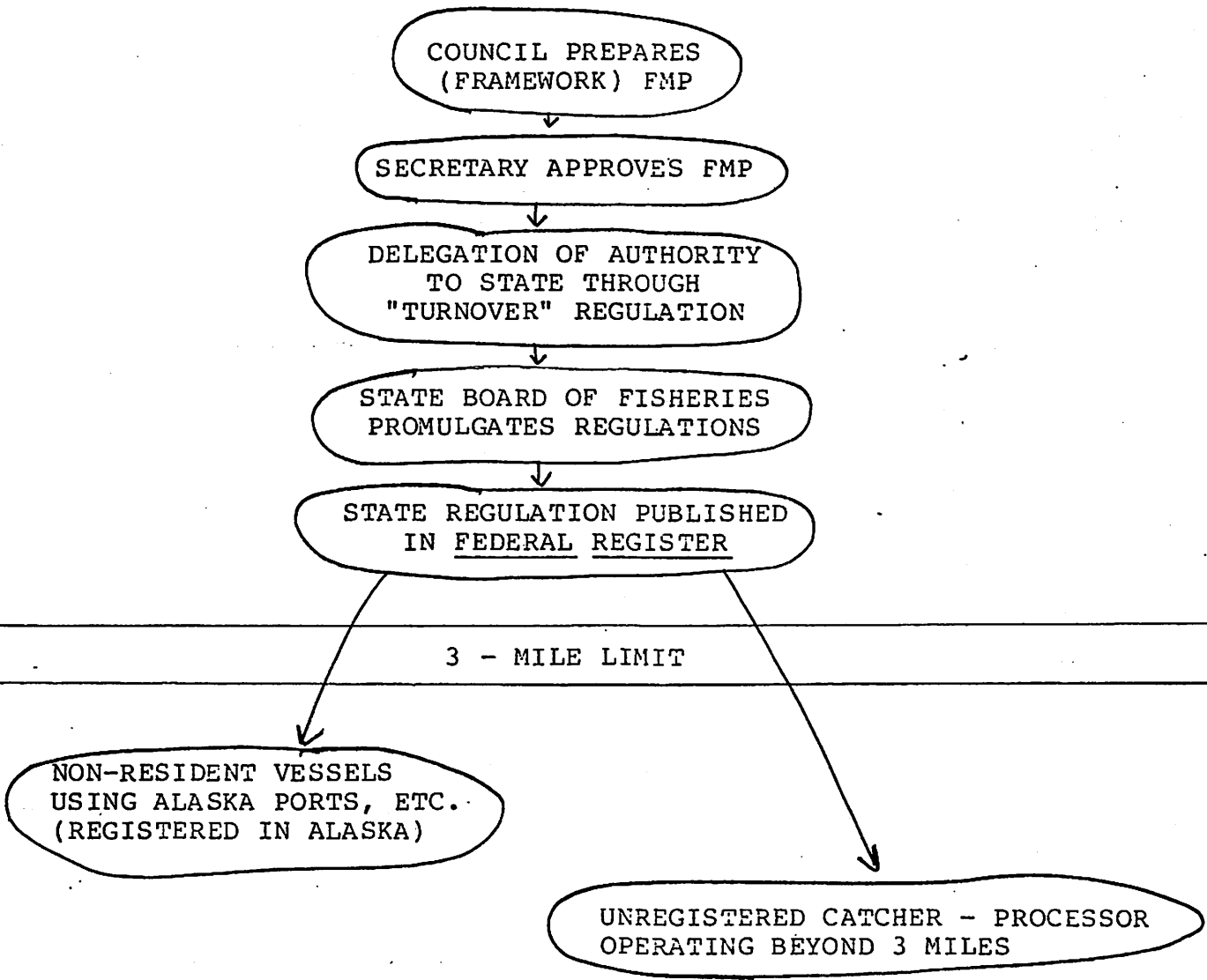
II. STATE REGULATION UNDER
FMP WITH DELEGATION



II.a STATE REGULATIONS AND FEDERAL REGULATIONS UNDER FMP



II. b "FEDERALIZED" STATE REGULATION
PURSUANT TO FMP



KING CRAB:

I. Pure State Regulation - Council Finds State Management Adequate

This is the only option where no FMP is approved by the Secretary of Commerce.

The Council makes a finding that State management is adequate, and/or that the benefits of federal regulation in this case are insufficient to justify the full costs of an FMP. This finding may be based on National Standard 7, ("minimize costs and avoid unnecessary duplication"), as well as on E.O. 12291.

Under this option the Council and Board may decide to operate under a protocol such as the Joint Statement of Principles, or a similar arrangement intended to allow some limited interaction between the two regulatory bodies.

PROS

1. Simplest, cheapest and most straightforward.
2. Does not require secretarial approval; no delays.

CONS

1. Political opposition strongest.
2. Does nothing to dispose of jurisdictional issues, which will have to be decided in court.

Comments

This is the status quo alternative; a logical choice under current theories of regulatory reform, suggesting that if the State is already doing a good job, the less federal intervention the better.

Doubts concerning the jurisdiction of the State over the registered (non-resident) and unregistered (catcher - processor) fleet would be unaffected; these issues probably would have to be litigated.

Success depends on the Secretary's abstention from ordering an FMP to be prepared under Magnuson Act §304(c). He need not agree with the Council's decision. He may conclude the decision of the Council, once made, should be respected unless clearly erroneous. E.O. 12291, requiring the least costly alternative, and National Standard 7, militating against duplication of functions, provide good support for this no-FMP option.

Litigation is quite likely here, since non-resident vessels will probably continue to resist State jurisdictional assertions. They may even sue for some form of affirmative "relief." However, based on NPFVOA's representations so far, there are few grounds, if any, to justify the conclusion that litigation will be much less likely no matter which option is adopted. Therefore, avoidance of litigation is probably not in itself a sufficient reason to choose any of these alternatives.

II. State Regulations Pursuant to FMP

This is the option the Board and Council have decided on for 1982; II(a) and II(b) are both variations on this alternative which were not discussed at the last meeting.

A framework FMP is prepared by the Council and approved by the Secretary. Through a single federal regulation under this FMP the Secretary delegates or "turns over" to Alaska the job of carrying out (implementing) the FMP through existing and future state regulations, to be promulgated by the Alaska Board of Fisheries, under Alaska law.

The Board will carry out its regulatory business in the usual way, except that it will hold at least one meeting in Seattle annually, mail copies of proposals, final regulations, and supporting materials, to the NPFVOA

membership and to operators of all registered vessels, and publish written explanations for the regulations it adopts each year in order to conform its regulatory procedures with federal Administrative Procedure Act.*

PROS

1. Allows full Council participation in planning for the management of the fishery.
2. Cuts down on federal regulations and associated delays since the only Washington, D.C., approvals needed would come at the "front end", when the FM.P and "turnover" regulation were adopted.
3. Allows the Secretary to hold federal powers in reserve in case the State fails to act according to requirements of the Magnuson Act and other applicable law. In this event, he can take corrective action by promulgating independent federal regulations under §305(c) or (e).

* All of these measures, aimed at showing Alaska's good faith efforts to include the non-resident fleet in its regulatory process, should be employed no matter which proposal is finally selected.

CONS

1. Probably does not extend State's jurisdiction over unregistered vessels operating outside three miles, thereby leaving a gap (or potential gap) in the regulatory net. (This gap may have an effect on the likelihood of the Secretary's approving the plan, although this is only speculation).

Comments

Under this option, as well as under IIa and IIb, the Secretary reserves authority to override any State regulations he may judge to be contrary to the framework FMP or the Act. He may do this through his Regional Director, or through Washington.

It is unclear, as a legal matter, what effect the delegation itself (the "turnover" regulation) may have upon the extraterritorial reach of Alaska's jurisdiction. Will a court agree that State regulations issued pursuant to a federal delegation of authority have a longer reach vis a vis non-resident vessels outside 3 miles; or will the court say that they are still only state regulations, and that delegation per se does not serve to extend a state's jurisdiction over non-residents.

IIa. State and Federal Regulations under FMP

This differs from II, above, only in that here the Secretary makes use of his reserved powers (after the delegation) to issue separate federal regulations intended specifically to reach those segments of the fleet over which Alaska's regulations may be ineffective. For example, he could direct federal regulations at catcher-processors which have no Alaskan contacts and are not registerable under State laws.

PROS

1. All the advantages of II, above, with the added benefit of full coverage.

CONS

(See Comments).

Comments:

What will be the full and final extent of federal involvement under this option? Will it grow over time? Will individuals and organizations continue to petition Washington for coverage by federal regulations? If so, any

advantages achieved in terms of saving time and money may be nullified in the long run.

I**ib.** "Federalized" State Regulations under (Framework) FMP

Procedurally, this differs from II only in one feature: the regulations issued by the Alaska Board of Fisheries would be reproduced in the Federal Register. In effect, this turns State regulations into federally enforceable measures reaching all vessels in the FCZ, including those which never enter Alaskan waters and are not registered under State law. There would be no need for any separate federal regulations.

PROS

(1) One uniform regulatory scheme covering the entire fishery, promulgated by the Alaska Board of Fisheries.

(2) NPFOA's demand for access to federal courts in enforcement cases could be satisfied.

CONS

(1) Will DOC and OMB be satisfied to review the framework

FMP, the delegation regulation, and the single, initial package of state regulations? Or will these agencies insist on individual, one-at-a-time, E.O. 12291 reviews of subsequent state regulations, thereby depriving the entire plan of its advantages? Since this proposal appears to satisfy most of the NPFVOA's complaints, and also conforms with the spirit of the Administration's program of regulatory reforms, we are hopeful that DOC and OMB will recognize these facts and refrain from any form of review tending to nullify the benefits of the arrangement.

NOTE ON ENFORCEMENT

The cooperative State-Federal enforcement agreement now in use need not be affected, regardless of which option is selected. Because the State has the necessary machinery already in operation, enforcement would continue to center around shore-based or dockside inspections, augmented by occasional inspections of pots in the water.

Under I, the no-FMP option, all enforcement actions would be filed in the district and superior courts for the State of Alaska. Under II, State regulations pursuant to an FMP, the result would be the same, since the regulations probably would be deemed State measures notwithstanding the delegation. Under IIa or IIb, however, certain cases would

be handled administratively according to FCMA procedures, by the NOAA General Counsel's Office in the Alaska Region. Others will be filed in the U.S. district court for Alaska by federal attorneys.

How enforcement jurisdiction will be shared between the state and federal prosecutors can be the subject of a separate policy agreement. Most likely, the state would continue to enforce against its residents, and against non-residents inside 3 miles who violate landing laws. In all probability, cases against unregistered vessels would be brought in federal court. Whatever policy is settled upon, however, it probably should be reduced to writing and published as a Federal Register notice, lest there be allegations of arbitrary conduct, selective enforcement, and the like.