

M E M O R A N D U M

TO: Council, SSC and AP Members

FROM: Clarence Pautzke
Executive Director



DATE: January 11, 1989

SUBJECT: Bering Sea/Aleutian Islands King and Tanner Crab FMP

ACTION REQUIRED

Approve FMP package for Secretarial review.

BACKGROUND

Scheduled for this meeting is approval of the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (FMP) for Secretarial review. In September the Crab Management Committee recommended several revisions to last summer's FMP package following a meeting of Alaska Board of Fisheries members and representatives of NMFS, ADF&G, and industry. The Council then approved the draft plan and its accompanying Environmental Assessment/Initial Regulatory Impact Review/Initial Regulatory Flexibility Analysis for public review after incorporating the recommendations of the Committee. The plan has been out for a 30-day public review which began on December 15 and will end Tuesday, January 17. Comments, including those from the Board of Fisheries, are in your supplemental folder.

Descriptions of the various advisory groups proposed in the plan, a review of the proposed management measures and their proposed categories, and several decision schematic diagrams are provided in item D-1(a). The Council must review particularly the management measure categories. Three measures, pot limits, registration areas, and closed waters still need to be placed into a category.

A meeting between members of Crab Management Committee, Crab Plan Team, industry, and the Alaska Board of Fisheries was held in Juneau on January 7 to review the current plan and identify any remaining issues. At the request of the Committee, the Alaska State Attorney General's office prepared a legal opinion on the possibility of the State taking regulatory action that would discriminate against non-residents. This legal opinion addresses a major issue and is provided as item D-1(b). Also presented was a legal review conducted by NOAA-General Counsel of current state shellfish regulations for consistency with the draft FMP and MFCMA [item D-1(c)]. With the exception of determining the appropriate category for each of the three identified measures, all other issues were easily addressed through minor revision to the plan. Larry Cotter, Chairman of the Crab Management Committee, can report further on the meeting. Final Council action at this meeting would allow FMP implementation by August 1989.

A brief history of the plan since 1982 is provided in item D-1(d).

Transcription of Council Discussion on Crab Management

Tape: Side 23 01/17/89 11:30 - 12:00 p.m.

Don Collinsworth: Mr. Chairman, this is obviously a weighty issue that has been around for some time. I hope that all of the Council members have had an opportunity to read the letter that was sent to the Executive Director by myself that's dated January 13, addresses this issue and also the letter from the Board of Fisheries that went to yourself, Mr. Chairman. And I say that I hope you've read that so that we don't have to repeat all the things that are in there. I think we have to make, Mr. Chairman, the threshold decision of whether or not the State is currently fielding a Conservation in Management program that is sufficient to meet the standards of the Magnuson Act, and that whether any additional adoption of a FMP is in the public interest and warrants the cost. Mr. Chairman, I have identified in my letter what I perceive to be the principal concerns. How those concerns can be addressed under the status quo arrangement with the State managing without the implementation of an FMP and I believe that we have to make a determination whether there are substantive issues that affect the conservation and management of those resources that will be enhanced under an FMP. I think that an FMP tends to only add administrative layers of bureaucracy that is not effective in improving the optimum yield from the fishery and improving the economics or the biology, or the management of the fishery. Therefore, Mr. Chairman, I would recommend that the Council find that the State is presently fielding a conservation and management program that is sufficient to meet the standards of the Magnuson Act and that the Council establish with the Board of Fisheries a Statement of Principles and that there be established a industry advisory group patterned after that which was described in the FMP and under that Statement of Principles with the State of Alaska and the Board of Fish and Game that there will be open and regular meetings between the Board of Fisheries, the Dept. of Fish & Game, the National Marine Fishery Service, and industry representatives at least twice a year during Council meetings here in Anchorage. And that the Council will review on an annual basis the compliance with those principles and make a determination whether the State is in fact consistently fielding a management program that the Council can find that is sufficient for both conservation and management of the resource; make that determination on an annual basis.

?: Second.

John Peterson: Was that a motion?

Don Collinsworth: Yes.

John Peterson: Could you concentrate that into fewer words?

Don Collinsworth: Yes. I will try, Mr. Chairman. I would like to do that in reference to the Board of Fisheries letter and my letter. Mr. Chairman, I move that the Council make a determination that the State of Alaska is fielding a conservation and management program that is sufficient at this time to meet the standards of the Magnuson Act, and other purposes of the Magnuson Act, and that the Board and the Council through a cooperative agreement establish as statement of principles provide for a Pacific NW advisory committee, and have the Council do an annual review of the performance of the State in carrying out conservation and management to make the determination on an annual basis whether that conservation management is consistent with the standards of the act.

Joe Blum: Mr. Chairman, I would be arguing that same position and probably have in the Pacific Council forum that Dr. Collinsworth has just articulated, however, in this particular instance I feel that a FMP is the better way to go and it is not because I have any concern how Dr. Collinsworth and the Alaska Dept. of Fish & Game have managed crab, or how he might manage in the future. I have some concerns,

however, with the Board of Fish & Game. Not because I think they are people with a mean attitude but because they are people who have a mandate that is substantially different from this Council's and it's substantially narrower. Mr. Stevens testified this morning that a lot of this has been eight years of political noise. I use the word noise he used something else. And could have left the impression that the politics on this issue were only the politics of the outside interest. I would agree that this issue has had certainly some political overtones in the last eight years, but no more so from the outside interests as from the inside interests. I think with the ownership and involvement of the non-resident participants in this fishery that the fairest, the most accessible to the non-resident, as well as to the resident, is an FMP process and I would urge the Council reject Dr. Collinsworth's proposal and we move on with the FMP as proposed by the AP.

John Peterson: Just one clarification of your motion. Your motion, in essence, is a status quo modified by the five points in your letter?

Don Collinsworth: Mr. Chairman, it is the status quo with some refinements in terms of establishing a joint Statement of Principles, the establishment of the committee, and the other actions that I identified in the letter.

John Peterson: The joint Statement of Principles is mentioned in your letter. An industry-funded PNCIAC is mentioned in your letter and that's why I was wondering if that's what you had in mind. Status quo modified by those five points you raised.

Don Collinsworth: Yes, and including establishing the twice annual forum during the Council week of the representatives from the Board, Dept. of Fish & Game, National Marine Fishery Service, and the industry, certainly Council.

John Peterson: Fine, thank you. Now you were making some comment on....

Don Collinsworth: Yes, Mr. Chairman, I guess I spoke to it briefly in the beginning and there is a lot of history and we've spoken to this issue many, many times. I thought Mr. Stephen's testimony was good testimony and he identified several of the concerns. I mean, what are the opportunity costs of implementing a plan? Clearly there are some costs and what it seems to do is finance additional administrative process that we have to determine whether it's really necessary in terms of the welfare of the industry and the resources that are being managed. Are we really willing to spend another \$180,000 or \$200,000 in terms of just process. What are the real justifications for having a plan? I have identified in my letter that there were two principle issues that I saw, and that was the fears of discrimination against non-residents participating in the fishery, and second, concerns about the insufficient access of the State regulatory process by non-residents. And it seems to me that there has been a good deal of clarification. There was an earlier letter from General Counsel, Pat Travers, that identified some of those concerns. There is a letter from the Attorney General's office that says that under the Constitution the State Board cannot discriminate based on residency. We still have all of the opportunities for the industry to appeal to the Secretary. The Council still has the opportunity to make the determination on an annual basis, whether there is a fishing conservation management program in place. It seems to me that when you examine these issues, issues-by-issue, there is recourse for anyone, be it resident or non-resident, to avail themselves of a system that will hear their concerns. And I think that what we have to do to determine whether or not, again that there is sufficient conservation in management, and whether this FMP does anything more than to add additional administrative costs. It doesn't seem to me that it improves the management of the resource. It doesn't seem to improve research. It doesn't seem to improve our understanding. It doesn't seem to improve the net benefits that can be realized. It seems duplicative, which were admonished under the Magnuson Act to avoid duplication. Does it really move us forward in a substantive way? I think that it does not. I think there are alternative ways that we have suggested

that will, in fact, meet the needs of those who have identified that they have concerns. There are protections under the law. There are protections under the Magnuson Act. Those protections prevail whether we have this FMP or not. And I just don't believe that its really in the public interest to move forward at this time with an FMP. It may be at some future time. I know that the Board of Fisheries has expressed a sincere concern to accommodate and make available all opportunities, participation by all people who are engaged in these fisheries, be they resident or non-resident. It's a very deliberative process. It has safeguards and protections associated with it. In many cases, it's a more deliberative process with more active industry participation and builds better records than this Council does. I think that there is not a need for an FMP at this time. We talked this morning about the FROG committee and the work that will be done there, and the need, perhaps, for contracting out some of the work and if we are talking about a delegation to the State, and I am very clear, I hope on record, that we are not going to accept the delegation unless the marginal costs associated with that delegation are financed by the Federal Govt. And I don't think Mr. Pennoyer has another \$200,000 in his budget right now to finance that. To the extent that it dilutes our efforts in dealing with groundfish, I don't think that's a benefit either. Mr. Chairman, I certainly encourage the Council to find that there is sufficient conservation in management in place and approve the process through a cooperative agreement, a joint Statement of Principles, the establishment of an advisory committee, and the establishment of twice annual meeting of the participants, Board, NMFS, ADF&G, the Council, and the industry.

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John Peterson: Mr. Collinsworth, just a minor question that's been in my mind as I've gone through this. How much does the State of Alaska collect on raw fish tax on crab?

Don Collinsworth: I don't know, Mr. Chairman.

John Peterson: Does anybody know?

Don Collinsworth: I don't know that we have the statistics available to raw fish tax just on crab.

John Peterson: Arni, do you know?

Arni Thompson: (Very vague, not at a microphone) I understand that an estimated \$6 million to \$6.5 million in '87 and '88. I do know the exvessel value of BSAI crab for '87 and '88 has been in the neighborhood of \$170 million.... I think its 5% of the 3% of the an average of 4%...

John Peterson: Would you put that in the ball park as being approximately correct.

Don Collinsworth: Mr. Chairman, I don't know what the answer is. I don't have any reason to dispute the figures that were just presented, but I do not know

?: It seems to me that \$180 would come out very significant if we are talking about that much in raw fish tax.

John Peterson: That was why I asked the question. Henry, and then Larry, and then Bob.

Henry Mitchell: I don't have the exact figures, but then again, there is also an investment credit which many of the companies get a substantial portion of that back one way or the other by the investments they make. So, that needs to be calculated also.

Larry Cotter: Mr. Chairman, I have two questions and then I'd like to make a comment. Fist question is to Mr. Pennoyer. Two years ago, or two and a half years ago when we first embarked on this process the NOAA or the Secretary, I forget which, stated very clearly that they would not approve of a delegation

to the State. That it was necessary for there to be an FMP with some oversight by the Federal Govt and they also stated they would support deferring maximum authority to the State within that FMP. Question to Mr. Pennoyer is has that position changed.

Steve Pennoyer: Mr. Chairman. Larry, I'm in somewhat of an awkward position like Mr. Collinsworth said I don't want to spend \$180,000 but in fact we have ear-marked that in our budget potentially for the implementation of the FMP. I had wanted to comment on that at first. I think the Federal Govt at that time and now has expressed its concern that King crab and crab resources in the BSAI area be managed appropriately with equal access to all participants through the regulatory process. I think the statement at that time and as far as I know it still stands is that it could best be accomplished under some type of affirmation of the State's management program, which I think everybody has agreed is accomplishing the appropriate conservation of the BS crab resource with minimal Federal oversight as is feasible at the least possible cost. I think that was determined and is determined to be some form of FMP being submitted for Secretarial review. Mr. Collinsworth's comments about cost and the administrative burdens are good. I think the Secretarial review process certainly includes looking at those costs and administrative burdens that might be incurred by such a plan. I guess the clear answer is that it is still the decision that a frameworked FMP of some kind that recognizes the cooperative State/Federal management with basically the State management program being the leader is still the position.

Larry Cotter: Mr. Chairman, my second question is to Mr. O'Connor. There was some illusion this morning regarding the ability of this Council to implement some type of limited access program for the crab fisheries in the absence of an FMP. Could you address that issue whether or not that's an accurate statement?

Craig O'Connor: I don't recall what the statement was, but in the absence of an FMP this Council could not implement a limited access system for any particular fishery, you would have to have the FMP for that fishery first.

Larry Cotter: Mr. Chairman, my comment is that first of all I have absolutely no problem with the initial statement contained in Dr. Collinsworth's motion. I think that the State has been doing an excellent job managing the resource and managing the industry, and frankly I can find no legitimate fault at all with any of the actions taken by the State during the past few years. I endorse his comments regarding the Council adopting a finding that the State is managing the fishery in accordance with the Act. Whether or not there is a need for an FMP, frankly I think that we could do without an FMP. On the other hand, I think that is pretty clear that the Secretary's position at least has not changed, and that position is that there must be an FMP. Albeit, one that delegates maximum flexibility to the State. Secondly, the issue of limited access, of course, is a very key issue and one that needs to be addressed in the next few years. In the absence of our being able to address that issue positively, because there is no FMP, it seems to me if I had to choose between getting a grip on the effort in the shellfish industry and an FMP I'd choose getting a grip on the effort in the shellfish industry. For that reason, Mr. Chairman, I going to have to vote against the motion, although it has absolutely nothing to do with the abilities with the State to effectively and fairly manage the fishery.

John Peterson: Bob Alverson.

Bob Alverson: Mr. Chairman, similar to Larry's comments, I believe the State of Alaska has contributed significantly to the management, conservation of the three species we are dealing with here under an FMP. However, the issue is not solely conservation and management, the situation as it now stands in the geographic areas we are looking at is management without representation. You have in these areas according to our report on Table 2.7, anywhere from 60-80% of the vessel participants operating in the number of areas out in the Aleutians and Bering Sea are non-resident to the State of Alaska. The State

of Alaska statutes to the Board of Fish, tells the Board of Fish to manage to the benefit of State residents, as it should be since its funded by the State of Alaska. This State statute is in conflict with the intent of the Magnuson Act where we're all treated equal in the EEZ waters. There is no representation on the Board for a non-resident of the State of Alaska. There is no recognition of a non-resident committee and its input to the State of Alaska regulations on crab. And the issue comes down to, as I indicated before, management without representation. And I believe the FMP before us delegates most of this to the State of Alaska, but there are certain issues that have come up in the past that are of concern and I think they are appropriately categorized in the three categories we have before us. There are obviously three points that we have to make a decision on but I have trouble voting on something that says the State of Alaska has not done all they could on conservation issues. I am going to vote against this motion because I believe we have to go forward and adopt an FMP.

John Peterson: Yes, Oscar.

Oscar Dyson: Mr. Chairman, I have to go along with the outline that Dr. Collinsworth described for us. I've been involved in that fishery for many, many years and I see no reason why we would have a better management under the FMP system. I think the State has done a good job and I support it. I would vote for the motion.

John Peterson: John.

John Winther: Mr. Chairman, I go along with what Oscar has said. I've been involved in the fisheries up there for quite some time also, and I've ridden the roller coaster up and down like everybody else have. Stock fluctuations, price fluctuations, and other things, I fail to see where management was the cause of any of that and I just can't see changing it now.

John Peterson: Craig, I would like to have a comment from you since I have looked through this document that NPFVOA have put together citing some legal reasons why there should be an FMP. I'm concerned that if this motion were to pass whether the Council is abandoning its responsibility by accepting a management regime, as good as it may be, but which is not an FMP.

Craig O'Connor: I haven't had an opportunity to study NPFVOA's comments, but I have had an opportunity to study your FMP and to study the record in support of that FMP. What I can tell you is from a legal standpoint, if you pass the motion and defer to the State and monitor it and see what happens and not implement an FMP, that's okie dokie. And if you decide that you want to implement this FMP in its form that's okie dokie too. At this point you are faced, in my opinion, with a policy call as to whether or not you want to implement a package that's going to provide a perceived relief to perceived political problems. I don't think there's any evidence that those are real problems, but I don't think there's any evidence that those are unreal problems. It's in the eyes of the beholder. You have a policy decision before you as to whether or not you want to respond to those political concerns. I think you've got a record that would support either decision, yes or no.

Tony Knowles: Mr. Chairman, may I ask a question of Craig on another point that was brought up in reference to if there was to ever be a consideration of a limited access to the crab fishery, does that require an FMP as administered by NMFS?

Craig O'Connor: Were there to be a federal limited entry system that requires that there be an FMP in existence. That doesn't necessarily mean that FMP would have to be the one you have, or that that FMP would have to be implemented today. It could be, if you decide in the future that the State is not adequately managing or that there is a requirement that a limited entry system be put in place with regard to this fishery, you could implement an FMP at that point that called for a limited entry system. It's not

that you would have to have it in place today to respond to those concerns in the future. But if you wanted to develop a limited entry system for the crab fishery today you are going to have to have that FMP.

Don Collinsworth: Mr. Chairman, the issue of whether or not the Secretary would make a determination at this point and time that a FMP was required I don't think that we necessarily have to accept that decision that was made some two years ago or earlier by the Assistant Administrator, I think that was probably the level that it was made at. I think that there was a different environment. I think that we obviously have some new people and since that was a policy call and not a legal call I think that there are perhaps new people there who ought to have an opportunity to review the record and to make a determination at this point and time with the changes that have been proposed for, and the legal decisions that have been forthcoming from the State Dept. of Law, as well as General Counsel, and the provisions that have been provided for under my motion for a Pacific Northwest advisory committee, and so on....

John Peterson: Steve.

Steve Pennoyer: Mr. Chairman, Don, I am not disagreeing with you at all in terms of the, either as pointed out before, the efficiency of State management, or the fact that your proposals are helpful, perhaps another way of looking at that is that the decision is still that in terms of what Craig said not necessarily strictly legal but a policy framework, that the FMP seems to be the viable option to the federal govt still at this time. Perhaps in terms of the Secretarial review process, that what you are saying might occur. That's not completely clear to me yet how your views or your amendments influence the process...review of efficiency and costs, but the current position is that a federal FMP that delegates as much as possible to the State of Alaska to continue the excellent program it had in place, but structures the input in terms of public input is the desired way to go.

John Peterson: Larry.

Larry Cotter: Steve, to your knowledge has there been a recent review of that decision?

Steve Pennoyer: I guess the question of review is a difficult one to answer. I'm not clear that anyone sat down and took this current FMP and superseded this Secretarial review process by sitting down and going through it, looking again at the options that are available through other means, such as what Mr. Collinsworth has proposed, no I don't think that specifically has occurred. I think it has been reviewed at least in discussions of the original position and discussions of where the process is now, and I don't think anyone is presuming that the Secretarial review process will actually implement an FMP, but that in fact the desirable option is to proceed at looking at one.

Don Collinsworth: Mr. Chairman, it seems to me that as Mr. Cotter stated earlier this is indeed a policy question. But a policy question that is both before the Council, and obviously before the Secretary, the policy question before the Secretary is whether or not an FMP is still a basic requirement from the Secretary's perspective, regarding crab management in the BSAI, or whether or not the Secretary is prepared to make a policy decision that is no longer necessary given Dr. Collinsworth recommendations. It sure would be nice to have that answered before we make our policy decision based upon a decision that was made two years ago and may no longer be appropriate.

John Peterson: Henry.

Henry Mitchell: Just for clarification, if we take no action whatsoever where does that leave us, just with status quo.

?: No, you are rejecting status quo.

Henry Mitchell: If we took no action on anything here today, Dr. Collinsworth's motion or another motion, it would leave us basically still managing and at that point the Secretary, I believe, could implement a Secretarial plan if he felt strongly about having the FMP. Is that correct?

John Peterson: Clarence, do you want to respond to that.

Clarence Pautzke: It's true. If you take this motion back off the table here you are back to what we've had so far - status quo.

Henry Mitchell: What we are being told is that the policy of the Secretary as of two years continues. My point is we are a policy group that would make recommendations. Those recommendations would be to implement, or not to implement an FMP. I think we are prejudging it by sitting around here listening to what the Secretary really desires here. I personally think we should do what is in the best interest of the resource. Most of the testimony is that the conservation and management has been fairly good and there are some perceived political problems about the way the system works. What Dr. Collinsworth has suggested seems to answer those perceived problems implementing the system of an advisory committee that would meet with the board and the Council at future dates, I think would resolve a lot of the perceived problems.

John Peterson: Yes, Larry.

Larry Cotter: I want to see this issue resolved. There are perceived problems, real or not, they are definitely there, they are problems. They need to be addressed. They can be addressed through the FMP, or perhaps they can be addressed otherwise as Dr. Collinsworth has said. They obviously need to be addressed and they need to be addressed concretely. But what we do also has to make sense. It has to make sense from an economic prospective as well, and it has to make sense from a management perspective. If we are forced into adopting an FMP based upon a decision two years that may no longer be applicable and we didn't know that it was applicable I'd like to have that before me right now.

John Peterson: Mr. Blum and then Mr. Collinsworth.

Joe Blum: Forget it.

Don Collinsworth: Mr. Chairman, I think we can adopt this motion and then if the Secretary is petitioned, the Secretary would have to make a determination as to whether or not an FMP was required. And then I believe that the Secretary has an obligation to notice the Council that if they fail to develop an FMP that the Secretary would develop it. I think there is either a legal requirement or certainly a protocol that that would happen. The work has gone into this FMP, it is there, and if the Secretary makes that determination that based, I mean if the Council makes their finding and these other procedures are established, other safeguards are established, the statement of principle is adopted. I think those would be adopted probably by a regulation, then I think we have the opportunity to have the Secretary review the status and make that determination.

Joe Blum: Mr. Chairman, I would like to get back in now. What I was going to say has to do with what I think the knowledge of the Secretary has been, or at least Secretary's representatives are well aware that this issue would come before the Council today, its been chewed on for some time. My sense is that had there been a change in Secretarial view he would have let Mr. Brooks or someone know within the Region that that view had changed or Mr. O'Connor. But I tend to agree with Henry, that we need to really put the Secretary's view, he'll have a chance to make his call with whatever we do. I think the AP addressed the same issues obviously and came down with a vote that should give us clear indication that from their prospective the majority of the members of the AP feel that we should move forward with a plan and the conditions under which we should do so, and I think we should follow that action.

John Peterson: Larry.

Larry Cotter: A question. Would it be possible as a means working our way out of the dilemma to do two things: To in essence adopt a motion made by Mr. Collinsworth, but at the same time move ahead and address the FMP and make the necessary adjustments to the FMP, if any, that we so desire, send both to the Secretary. The Secretary then has clear choice, we have an FMP ready to go into effect in the event the Secretary says "my position has not changed." On the other hand, if the Secretary says "I've looked

at the five points raised by Dr. Collinsworth and the other items and I feel that that is satisfactory." So that we do indeed received the benefit of a Secretarial review on this policy issue is not something that we can do legally.

John Peterson: I doubt that that would be an acceptable approach. I think the Council should make up its mind on what it wants to do and not send an option back to the Secretary. He might like that and want options all the time. I would be opposed to that. I guess I feel, with reference to this particular issue, I'm very disappointed that there was no agreement reached over the last year or so with the industry negotiating and the crab management team coming so close and still so far away, I think we are faced with another problem that we should be aware of and that is, I'm not speaking in favor of Mr. Collinsworth's motion, I would oppose, if it fails we then are left with the issue of the FMP and the adjustments that would be necessary from the point of view of those people from outside the State of Alaska are probably not acceptable to the State of Alaska. Certainly, the letter from Mr. Slaven, as well as Mr. Collinsworth's letter are very clear in that regard, so I would suspect that if this does not pass we find ourselves in the dilemma of having an FMP that probably would not pass either. I just think that might be the way things are at this point. We do have Mr. Collinsworth's motion before us, is there any further discussion? We'd better have a roll call vote. Yes, Steve.

Steve Pennoyer: Mr. Chairman, while Larry is thinking can I make a comment? I hope that a vote one way or the other, Mr. Collinsworth's motion doesn't indicate that we don't like the things that he is proposing. And in fact, I think they are excellent moves in the direction that process wanted to go. It's simply whether his motion is exclusive of an FMP that we would have trouble with. If that's clearly understood I am prepared to vote on it.

Don Collinsworth: I promise not to take it personal unless you vote no.

John Peterson: Mr. Collinsworth's motion is status quo modified by the five points he made in his letter. It's approximately correct. It was a long motion.

Don Collinsworth: Well, it was a long motion, Mr. Chairman, but I think the key point is that the Council has made a finding that there is sufficient conservation in management in place, and that with some additional procedural items being taken care of as I proposed, that the Council does not recommend that we move forward with an FMP at this time. So its really a finding. It does maintain the status quo but modified for a joint statement of principles essentially a cooperative agreement, the establishment of a Pacific Northwest advisory committee, and so on, so its not just status quo.

John Peterson: Okay, let's call for the question. Let's have a roll call vote.

Clarence Pautzke: Mr. Collinsworth, yes; Mr. Cotter, no; Mr. Dyson, yes; Mr. Knowles, yes; Mr. Mace, no; Mr. Mitchell, yes; Mr. Pennoyer, no; Mr. Winther, yes; Mr. Alverson, no; Mr. Blum, no; Mr. Peterson, no. Fails.

John Peterson: Yes, Mr. Blum.

Joe Blum: Although I can't read it, I would adopt or move that we adopt the AP's recommendation as modified, an FMP as modified by the AP which would include under category I, federal observers, under category III, state observers, and pot limits, registration areas, and closed waters under category I, but with a designation that those would be subject to regulatory amendment and not plan amendment.

?: Second.

John Peterson: Any discussion on this...Steve.

Steve Pennoyer: We may have to break that down because I think there is a number of different ways of looking at those, particular the issues between observers and the other three categories. And if you are willing to separate those I think we could proceed easier with the discussion. Observer separate from the other three issues. The observer is more in contention by anybody, and I think the other three issues still were...

?: I think the motion was taking into consideration the finding of the AP with reference to observers. I don't think that's a contentious issue. The placing of those three, the pot limits, registration areas, and closed waters into category I is contentious, has been, whether the change into a regulatory amendment from an FMP makes any difference I don't know.

Steve Pennoyer: I guess my point was that we could address those separately and I think there are separate reasons for looking at those in different ways.

John Peterson: Can we discuss those while its one motion or did you.... We have Bob Mace and then Mr. Collinsworth.

Bob Mace: The most contentious issue is that it's lunchtime.

{Lunch Break}

{Lunch Break continues}

John Peterson: Does anyone know where Steve Pennoyer is? I think we have enough Council members to proceed. We have the main motion before us and there's been some suggestion that amendments might be offered to that main motion. Yes, Mr. Collinsworth.

Don Collinsworth: I move to amend the main motion by placing in category II pot limits, registration areas, and closed waters.

?: Second.

John Peterson: Is there any discussion on that motion? Yes, Mr. Blum.

Joe Blum: Mr. Chairman, I want to speak against the motion briefly. I believe the action that the AP took was an attempt to accommodate the needs of the State of Alaska, at the same time recognizing the concerns of the majority of the industry that these be in an arena that allows a little more opportunity for those most affected by these decisions to be a part of those decisions. And I again indicate that I speak against the amendment.

John Peterson: Is there any other comment on that? John did you raise your hand? These have been the three sticking points for some time in the negotiations, or at least they surfaced several months ago and it is unfortunate they have not been agreed upon, but they have not been. And the industry that is affected has certainly indicated their position as wanting those three items in option #1. Don?

?: Mr. Chairman, I do have a question. Mr. Collinsworth, the way I read the letter from the Board of Fisheries is that they basically wouldn't accept this plan under any conditions. I don't know if you can speak for the Board but would this possibly change their minds?

?: Mr. Chairman, I need to refer to that letter for a moment.

?: I'm reading the third paragraph where it says "First and foremost, the Board believes that there is really no reason to implement the FMP at this time."

JOHN

~~Jim~~ Peterson: Well, I think the significant part of that letter from Gary Slavin is on the second page he says "If the North Pacific Fishery Management Council proceeds with adoption of this FMP the Board of Fisheries can not recommend State acceptance unless the current draft is revised to (1) provide for the current Board review cycle every-other-year for King and tanner crab, and allow the Board the flexibility to modify that cycle if necessary, (2) include pot limits, registration areas, and closed waters in category II, and (3) place the State of Alaska observer program in category III." I don't that last issue, #3, is of concern. The second one certainly addresses these three points that Mr. Collinsworth has moved on. It would appear to me that if those three items, pot limits, registration areas, and closed waters are put in category I the Board of Fish will reject the FMP. That's what their letter says. Yes, Mr. Cotter.

Larry Cotter: Mr. Chairman, that's my reading of both the letter from the Board and the letter from Dr. Collinsworth and I think its pretty clear that if we are going to have an FMP that's actually going to be implemented and accepted by the State, then we have to accede to these particular requests.

JOHN

~~Jim~~ Peterson: Yes, Mr. Blum.

Joe Blum: Mr. Chairman, I wonder if any of the Council staff were present at the January 7th meeting in Juneau of the... you were present?

Steve Davis: Yes sir.

Joe Blum: Was there a consensus reached at that meeting as to those that were present how they ought to move forward and if so, what was that consensus?

Steve Davis: Mr. Chairman, at the time of that meeting there was not a full representation of either the crab management committee or the Alaska Board of Fisheries. There were two Board members in attendance, one being the Chairman of the Board of Fisheries. And at that time during the deliberations one of the options that was being offered was that to place registration areas into category I, and closed waters in category II. There seemed to be, at the time of that meeting, some agreement that that would be acceptable to the parties present at the meeting. There was no consensus at all with regards to [?not clear] __ements the appropriate category for that.

John Peterson: Yes, Mr. Cotter.

Larry Cotter: Mr. Chairman, I was at that meeting as well, and my memory is just a little bit different from yours, Steve. I recall some indications from the NPFVOA that they would be agreeable to place enclosed waters into category II, but I don't recall any indications from the Board that they would be agreeable to leaving registration areas in category I. Chairman Slavin did indicate at one point in time that he might be agreeable to supporting that but he was going to talk to the Board about that. He subsequently talked to the Board and judging by the letter we've received the Board declined to go ahead with the registration areas in category I. Conditionally, there was one other thought thrown forward and that was to place the three items into category II but to implement them through the regulatory amendment process very similar to what was recommended by the AP, although they recommended placing them in category I, and implementing them to the regulatory amendment process. That was not agreeable either.

John Peterson: Yes, Mr. Collinworth.

Don Collinworth: I'll speak to my motion. Mr. Blum indicated that there was a consensus or the AP recommendation was a compromise of interest. I can tell you that in terms of my compromise to the issue moving away from my earlier motion to consideration of an FMP is a substantial compromise. I believe that we have kind of established a kind of minimal threshold of acceptability to the State of Alaska. And that minimum threshold is articulated in my letter and Mr. Slavin's letter. In addition to the present motion, Mr. Chairman as you pointed out when you read Mr. Slavin's letter, there does need to be consideration of a couple of additional items, but since it wasn't within the framework of this motion my amendment didn't address them but there are a couple of other things that need to be done as well.

John Peterson: Yes, Steve.

Steve Pennoyer: Mr. Chairman, I think that from the federal govt perspective we are concerned with the management void discussion that has gone on before, but forwarding an FMP it would be desirable to have one that is going to go into effect and that the State does adopt and allows State management to continue in the fashion generally that it has to date. I guess I'm going to buck this over to Craig O'Connor in a second, but my understanding is that a category II on these three issues adequately protects the Secretary's ability to review actions taken by the State for consistency with Magnuson Act and other applicable laws. If that is the case, then I think we are going to have a hard time supporting something the contrary motion, I guess if you go to category I which may result in a lack in State management. So

I guess I'd ask Craig O'Connor, do you wish to comment on the protection provided under category II in these three regulation areas?

Craig O'Connor: I think the protection provided by category II is sufficient particularly in light of the fact that the suggestion to modify the category I on those items is really kind of, let's let the State do it and we will review it or let's not let the State do it and we won't review it, we'll do it ourselves; instead of mixing and matching by way of compromise. I think is a legal matter. In category II, the only way the State is going to be able to implement something is to have, that will apply in the EEZ, is for us to have approved it and that's really all that's needed. And that's, I think, just fine.

John Peterson: Mr. Blum.

Joe Blum: Mr. Chairman, I'm sorry were you done Steve? I'd like to ask Dr. Collinsworth if he knows the frequency within which the Board changes registration areas, or opens and closes closed waters, or modifies pot limits. Is this something that they do at every Board meeting or is this something that they do periodically, have they ever done it to your knowledge?

Don Collinsworth: Mr. Chairman, I can't give you a quantitative answer, Mr. Blum. The Board did review those various tools and they felt that they wanted to have access to them in a way that was not provided by category I. The frequency of which they might address these issues I can't say. It is not unlikely that in the regulatory process that some member of the public, some industry member, or an advisory committee may make a regulatory proposal that deals with one of those areas. It's not unheard of that that happens, but whether the Board affirms or takes a positive action to implement one of them happens only when they make a determination that it's appropriate and I can't recall the last time they have implemented any new regulations that would fall into those three categories.

Joe Blum: Then I would have to ask, and this is not one seeking necessarily an answer, but I would have to ask if it is something that is done infrequently why it is onerous that it be under a category I as opposed to a category II limitation. If it were something that was a in-season frequent management tool that was in fact practiced by the Board I would suggest that maybe there is some merit in that. Absent that, I'd have to question that.

John Peterson: Question. The motion, Clarence, would you like to restate that please.

Clarence Pautzke: It's to move the three majors, pot limits, registration areas, and closed waters to category II. Roll call. Mr. Cotter, yes; Mr. Dyson, yes; Mr. Knowles, yes; Mr. Mace, no; Mr. Mitchell, yes; Mr. Pennoyer, yes; Mr. Winther, yes; Mr. Alverson, no; Mr. Blum, no; Mr. Collinsworth, yes; Mr. Peterson, no. Passes.

John Peterson: Yes, Larry.

Larry Cotter: I would move to amend the main motion to provide for a State observer program in category III. That was in the main motion.

?: Federal observer program in category I, State observer program in category III.

John Peterson: Admiral.

Admiral Nelson: Mr. Chairman, I've got a question here. There's a conflict of language between paragraph 11 on the bottom of page 211, and a letter that was sent to Mr. Clem from Coast Guard headquarters regarding the enforcement resources. We can clarify this if you change the language in

paragraph 211 to eliminate all the words between paren DOT paren to shall (DOT)....shall. In other words, eliminate "Will direct enforcement resources toward and," we simply say "We shall work in cooperation with the State," it should satisfy the needs and remove the conflict.

John Peterson: Okay. That is so noted.

Henry Mitchell: Mr. Chairman, I really don't understand the reasons for this change.

Admiral Nelson: Because right now, it would appear here that we are we are going to be directing our resources to the State, turn it over to the State, it could be read that way. The point is we are right now, with the number of resources we've got we'll do full out trying to enforce the foreign fishing regulations and the other regulations we are required to carry out. We are, however, through knowledge of your information already boarding crab boats and we turn it over to the State for prosecution. We are not going to change any of that, we will continue to cooperate within the limit of our resources, but we don't have any additional ones to give to the State here right now.

Henry Mitchell: This FMP is basically responding to what was a Secretarial concern that more oversight from the federal govt and I think if they really want to be more involved then they should be willing to put more resources towards the various aspects of management and enforcement. So I would like to leave that in.

John Peterson: Do we need an amendment to the main motion to cover that?

Steve Pennoyer: Mr. Chairman, If I understood the main motion it was simply dealing with the categorization of various management tools and did not talk about the rest of the FMP.

Clarence Pautzke: It was adopting it as amended by the AP.

Steve Pennoyer: I stand corrected.

John Peterson: Clarence, do we need a motion?

Clarence Pautzke: If there seems to be some debate on it.

?: Mr. Chairman, I would so move to delete that language.

?: Second.

John Peterson: Is there any discussion? Are there any objections? Two objections: Henry and Mr. Collinsworth. Yes, Larry.

Larry Cotter: Mr. Chairman, I move to amend the main motion by deleting item 9 on page 2-11, which refers to "Representatives of the State and the Council will hold at least one annual public hearing in the Pacific Northwest." Mr. Chairman, this item was discussed at the January 7 meeting and there was agreement between all of the different entities there that this meeting was no longer necessary.

John Peterson: Question. I need to ask a question. This has to do with the annual meeting?

Larry Cotter: Yes, Mr. Chairman, it would delete the requirement that there be a joint State-Council annual public hearing in the Pacific Northwest on crab.

John Peterson: The question has been called for, are there any objections? Two objections: Mr. Alverson and Mr. Knowles.

?: Mr. Chairman, I need to seek some advice from staff or legal counsel in order that I may determine whether or not to make another amendment. One of the issues that was pointed out by the Board as being essential was to provide that the current Board review cycle every-other-year for King and Tanner crab, be allowed.... I'll read it specifically: "Provide for the current Board review cycle (every-other-year for King and Tanner crab), and allow the Board the flexibility to modify that cycle if necessary." If that is accommodated within the context of the FMP that is fine if not I will offer an amendment to be explicit.

John Peterson: Steve.

Steve Davis: Mr. Chairman, that particular comment refers to some text in the plan that was put together to describe, at that time, was the current Board of Fisheries' proposal amendment cycle. And recently the Board of Fish have adopted a change to the cycle to a 2-year cycle, so that change can easily be accommodatable before sending the package forward for Secretarial review.

Larry Cotter: Mr. Chairman. On that subject, I did work with Ray Baglin late last Friday in anticipation of this issue arising, and we have identified all the language in the FMP which addresses that issue and if you need a motion I can provide replacement language or if you just want to indicate that this is the Council's desire to amend the FMP we've got that worked out.

John Peterson: This is changing the FMP?

Steve Davis: It would be a technical change which would better describe the Board of Fisheries regulatory process.

John Peterson: Larry, before we proceed do you have any other technical changes so we can lump them together?

?: Mr. Chairman, before we leave this one, I think it may be more than a technical change. Are we adopting the Board 2-year cycle as opposed to an annual cycle?

?: Yes.

Joe Blum: That's not technical, that's substantive in my view. In fact, Mr. Chairman, most of the point I tried to make unsuccessfully earlier, that moving from category I to category II was not really necessary because the Board doesn't deal with this issue very often. So there would be a lot of opportunity and here we go. We are already seeing where we are trying to accommodate a situation that is not conducive to positive relationships between non-resident and resident fishers in this area. I'm very concerned. That's not in my view a technical change.

John Peterson: Steve, you were going to make some comments.

Steve Davis: Yes, Mr. Chairman, I was referring to the text. That particular plan text is in a descriptive section of the plan as opposed to a management measure section to the plan, and so my comment in terms of it is relatively housekeeping type of change was made with that in mind.

Joe Blum: But does the plan adopt the Board process by reference?

Steve Davis: Yes, but the Board could change that cycle to a year cycle if they wanted to. It's a descriptive section of the plan that describes the management process as we now know it. I would think if that were to change that could be easily revised in future editions of the plan.

Joe Blum: Mr. Chairman, if the Council wanted to make sure the Board reviewed crab on an annual basis, I said if, would we have to amend the FMP if we make the technical amendment that you are suggesting?

Steve Davis: You'd need to consult with the team to see if that change is necessary.

Larry Cotter: Mr. Chairman, while they are looking at that, the plan, even with the 2-year Board cycle, does provide for preparation of an annual report and that report would come to the Council so the Council would have an opportunity on an annual basis to take a look at what's going on with crab management.

John Peterson: Receipt of a report does not provide a forum for any action or any change. It simply repeat....

Don Collinworth: Mr. Chairman, the multifold reason that the Board has gone to an every-other-year regulatory process in dealing with fisheries all the way across the state is just a determination that unless there is some extraordinary event that there is not a need to do an annual regulatory process. They have procedures to accommodate unanticipated events. They have a petition process which would allow the public to avail themselves to take up for example the BSAI king crab issue if there were needs to do that. Industry has in fact expressed some interest in trying to see a little bit more stability in the regulatory regime. Rather than having to come in on an annual basis and fight the crab was, so to speak, in a regulatory process they would like to see a system in place that has a little more durability, and it's just a matter of efficiency and cost. The Board presently is doing an every-other-year process at this time and they wanted to make sure that that was accommodated within this FMP and they were not required to have an annual regulatory meeting for crab, and they also wanted to have the flexibility to make an adjustment if they determined that every year is necessary or that kind of frequency is appropriate.

Joe Blum: Mr. Chairman, I don't mind an every-other-year approach, I mind the flexibility that allows the Board unilaterally to modify that cycle. I don't know how they do that. I don't want participation there would be from the affected parties. That aspect concerns me. I'm also doing halibut and a number

of things on an every-other-year basis. Again, I was mainly concerned that it was being carried as a technical amendment and I think it's substantive.

Steve Davis: Mr. Chairman, I talked to the members of the team and I was correct in that its reference is in the descriptive section of the plan. The description sections of the plan are not implemented by any federal regulations and there are other parts in this same descriptive section that says that the precise scheduling of the various procedures in the plan may vary from year-to-year, so I think that answers your question.

John Peterson: We do not have an amendment, we have a main motion but no amendment. Does that explanation satisfy you two down there? Don is the one that brought this up.

Don Collinsworth: I understand that the plan as written does meet the criteria in item #1 identified by the Board provides for the current Board review cycle and allows the Board the flexibility to modify that cycle if necessary.

Steve Davis: That is correct.

Henry Mitchell: Mr. Chairman, for clarification if the Board chose to modify the cycle to a 4-year they could do that?

John Peterson: Correct.

Steve Davis: It wouldn't require a change to their implementing regulations at all, but as a matter of process whenever that plan amendment was prepared we would attempt to update the descriptive sections of the plan to describe the current process as best we can.

John Peterson: Bob Alverson.

Bob Alverson: Steve, the way the Board is currently set up, at what annual meeting of the Council would we pick up crab issues.

Steve Davis: In the past, that meeting has been in March/April depending on Council and Board's meeting schedule, and I would assume that same schedule would hold through.

Bob Alverson: The intent here of changing Board flexibility, is that intended to change the monthly time or is that more of an annual change from 1-year to 3-years to 2-years, what's contemplated when it indicates and allow the Board the flexibility to modify that cycle, what are they referring to, do you know? Is it just annual cycle changes?

Steve Davis: I think that was the intent of that particular comment, and as Dr. Collinsworth has pointed out, should issues come to the Board's attention that they feel cannot wait for a 2-year cycle then they would like to have the flexibility to address those in a more timely manner.

Clarence Pautzke: We do have a policy on annual changes to our plans and crab is in that though it has never been really implemented. Depending on what your decisions are here today and as far as your annual review or the Board's review we would need to change our policy.

John Peterson: Yes, Larry, do you have further amendments you are going to offer? My question is whether they are of a technical nature that could be lumped together.

Larry Cotter: The other motion that I will end up offering refers to the Pacific Northwest Industry Committee. I don't think it's technical, but I don't think there's going to be much dispute over it.

John Peterson: Would you identify that one? Are you making an amendment?

Larry Cotter: No, I wanted to address this issue. I'm not sure we brought this issue to closure and I think we need to.

John Peterson: Are you talking about page 2-11, item #9, is that the one you are talking about?

Larry Cotter: No, I am talking about the issue that Dr. Collinsworth raised regarding the Board's annual cycle. I don't know whether he made a motion or not. What I would do is first off, point out that on page 2-1, if you take a look at page 2-1 at the very top: "Implementation of this FMP requires an annual review of king and Tanner crab management measures and regulations by NMFS, the State, which means the Board, and the Council. In order to conduct this review they will rely upon proposals and advice received during the year from" so on and so forth. That language reflects an annual Board regulatory process. The Board does not have an annual regulatory process and the language in here does not reflect the possibility that the Board would change that process. And that's the issue that the Board was getting at is that this language should be modified and similar type of language throughout the FMP should be modified to reflect their 2-year cycle. For example purposes, the language that we worked up to address this would read as follows: "Implementation of this FMP requires an annual area management report discussing the current biological and economic status of the fisheries, GHL ranges, and support for different management decisions or changes in harvest strategies as outlined on page 2-11. The State regulatory body governing crab currently receives proposals for king and/or Tanner crab regulation changes every-other-year, although the schedule may be modified if necessary." That's the type of replacement language that we've been looking at so that the Board's regulatory process can be accommodated, but at the same time the Council will receive an annual report on what's been going on the preceding year relative to biological and economic changes that may have been occurring. If it's necessary, I guess it is Mr. Chairman, I would move that the main motion be amended to replace the references to the annual Board cycle with appropriate language to accommodate their current meeting schedule.

?: Second.

John Peterson: And that motion includes a rewriting of this paragraph at the top of page 2-1.

Larry Cotter: I can tell you the pages where the rewriting....

John Peterson: No, you changed the wording rather substantially in that first paragraph.

Larry Cotter: It would include changes on page 2-1, page 2-2, 2-5, and 2-11, page 7-9, and 7-10. Those are the places in FMP that currently refer in one way or another to the Board's annual regulatory cycle.

John Peterson: Yes, John.

John Winther: Mr. Chairman may I ask a question. Say I am in an aggrieved party under the Board's decision to change from an every 2-year to an every 4-year, perceived that I am. On page 3 of the staff document under D-1 it shows an appeals procedure flow diagram. Would the aggrieved party be in the preseason action appeal process?

Larry Cotter: Mr. Chairman, I will try to answer that as best as I can. Yes, the perceived party would be in the pre-season action, however, I believe that the Secretary's authority to grant an appeal rests upon whether or not the regulation that's being implemented violates the FMP, the Magnuson, or other applicable federal law. Given the language that we're contemplating here specifically, "although the schedule may be modified as necessary," it would appear that that change would be outside of the scope of the Secretary's review. However, we do have a crab interim action committee which consists of the Director of Washington State Fisheries, the Commissioner of Fish & Game, and the Regional Director. And a party that was not pleased by that change in the Board's schedule could refer that issue to the crab interim action committee which does not have the authority to order a change but does have the authority to look at the issue and determine whether or not that issue should be brought to the Council. In the event the issue is brought to the Council, the Council is then in a position to address it through the FMP amendment process or through some other mechanism as may be appropriate.

John Peterson: Is there any other discussion on Larry's amendment to the main motion? Are there any objections to that motion? Hearing 2 objections, Joe Blum and Mr. Mitchell, the motion passes.

Larry Cotter: Mr. Chairman, my last amendment to the main motion occurs on pages 2-7 and 2-8. I'll offer the amendment and then perhaps explain. I would move to amend item #6 in the following manner: The first sentence of item #6 on the top of page 2-7, I would add the words "A special means of" to the start of the sentence. Then the language would continue "access to the BSAI king and Tanner regulatory process," I would delete "particularly," so it would read "A special means of access to the BSAI king and Tanner crab regulatory process for non-residents," and that would continue unchanged until we move to page 2-8, the last paragraph, the last line I would place a comma after FMP and add the phrase "as may another Board advisory committee." That would be my motion Mr. Chairman.

?: Second.

Larry Cotter: Mr. Chairman, the motion does not alter the workings or the right of the Pacific Northwest Industry Advisory Committee, nor does it alter the rights of any other advisory committee. It just, perhaps, clarifies the fact that other advisory committees also have similar type of rights as the Pacific Northwest Industry Advisory Committee, and it addresses some of the concerns that have been raised by Mr. Stephen in his testimony.

John Peterson: Is there any discussion on this motion? Are there any objections to this motion? Hearing none it passes. That was an amendment to the main motion. We still have the main motion before us, are there any other amendments? Mr. Collinsworth.

Don Collinsworth: Mr. Chairman, again I may be seeking some guidance, but I am prepared to offer a motion. I think that within the context of this FMP the Council should go on record as acknowledging the fact that the implementation of this will impose additional costs on the State, and that it is the intent of Counsel that the additional costs that result from the State accepting the delegation and carrying out the provisions under this FMP shall be financed by the federal govt. In fact, I'll make that a motion.

?: Second.

John Peterson: Whenever I think of additional costs, how do you go about determining what those are?

Don Collinsworth: We determine it when we have to pay the bills.

John Peterson: Determination can be audited. I don't know how these things work on the govt level.

Henry Mitchell: Mr. Chairman, if you are a sub-contractor in the defense industry the costs are exorbitant.

John Peterson: We are not in the defense industry, we're defending turf, perhaps, but.... Okay, we have an amendment to the main motion. Is there any discussion on it?

Bob Alverson: Mr. Chairman, could you have that read back in its entirety.

Clarence Pautzke: The Council goes on record that implementation of the crab plan will impose added costs on the State. These costs shall be financed by the federal govt.

John Peterson: Yes, Mr. Blum.

Joe Blum: I obviously support the philosophy of the motion. I also share your concerns about how do you determine. I would be comfortable if Mr. Collinsworth would be willing to amend that in some way that it alludes to fairly documented, whatever, so that the world has a sense to assess what is added costs versus what is existing costs. I think that would be helpful.

Don Collinsworth: I'm not sure, Mr. Chairman, precisely how we would enter into that contractual arrangement with the National Marine Fisheries Service, but I suspect that it would be a contractual arrangement not simply a grant to the State. And within that contractual arrangement we would have to prepare performance standards documentation of what additional costs are incurred by the State by accepting this delegation under the requirements of the FMP. There are processes and reports and analysis and findings and a whole other array of additional work that is required, and we can, I'm sure, that in developing that contractual arrangement with the National Marine Fisheries Service can identify those marginal costs and they would have to be subject, obviously, to federal procedures and audit, and would have to produce the products that were intended.

John Peterson: Yes, Steve.

Steve Pennoyer: Mr. Chairman, while I'm sympathetic to the concept, it gives me some pause. I'm not even sure if this is part of an amendment to the FMP that we can include it in an FMP. I'd ask Mr. O'Connor, somebody more versed with what's an FMP than I am. If that type of contractual arrangement should be actually incorporated in an FMP.

John Peterson: I guess I had a similar concern and that is whether the Council can mandate such a cost be assessed to the federal govt. Do you care to comment on that Craig.

Craig O'Connor: I don't know the answer.

Don Collinsworth: Mr. Chairman, giving okie dokie a chance to cogitate on that just a moment, that's the right answer isn't it, I think that the important thing is that the Council acknowledges that a condition under which the State will accept this delegation under this FMP, an essential condition is that the additional costs posed by this FMP will be borne by the federal govt. I think that the Council needs to understand that if we adopt this FMP, just like the Marine Mammal Protection Act and the observer program, and the Congress authorizes some money but they don't appropriate it, then we ain't gonna do it. So someplace the Council needs to send a strong signal to the Secretary that says Mr. Secretary if you adopt this plan that acceptance of the delegation is going to be predicated on federal dollars covering the marginal costs to the State of accepting the delegation.

Steve Pennoyer: Mr. Chairman, I have a problem with that Statement of Intent. If that comes through strong and clear, that's fine. I don't think you can put it in a plan. I think there are various legal contractual problems and so forth that putting it in a plan as a regulation would be a problem.

John Peterson: Yes, Bob, and then John.

Bob Mace: Why don't we include in it the cover letter that goes with the submission of the plan.

Don Collinsworth: Mr. Chairman, I'm willing to accept that. I didn't know whether that could be in the descriptive part of the plan or whether it should be done in a cover letter, but I think we need to be very clearly on the record. I am willing to withdraw my motion if Mr. O'Connor thinks that is a more appropriate way of dealing with it.

Craig O'Connor: I agree it's more appropriate, I'm not sure the Secretary would disapprove a measure that called for a commitment of funds, I think that probably the Secretary would make an independent judgement as to how much money is going to be devoted to supplementing the State and its management and that would remain open. What begins to concern me Don, and I think we ought to get it out because you keep mentioning it, you are talking about accepting a delegation and I don't see that this plan calls for delegation as prior plans had done. What we basically are doing is setting up a review process and an oversight process. We're really not going to be delegating federal authority to the State, and if your perception is that that's going to occur maybe you're just using that as a shorthand expression, agreeing to cooperate with the federal govt and the management of this resource in this fashion.

Don Collinsworth: I guess I was using the shorthand and it is either that agreement to continue to engage in these activities that I am talking about.

John Peterson: Yes, John.

John Winther: Well, if this FMP is approved but the funds aren't forthcoming, what is the State's position then, do we walk away from it and say we aren't going to do it?

Don Collinsworth: Well, I guess we would be placed in a awkward situation of having to abrogate our responsibilities under the plan and, therefore, the Council would have to find us in violation because I am not going to pay another \$180,000 or \$200,000 to implement this plan.

?: As a follow up, I have a problem with placing that burden on the State knowing every year there's going to be a fight for the funding. Its just one heck of a position to be in. One year State might have the ability to manage the fisheries and the next they might not, depending on the funding, who gets in whose britches to get the money.

John Peterson: If I might comment on that, it seems that the State has the authority to assess raw fish taxes, which they have done and which they have in place. Federal govt does not have that authority under this plan. Seeing that the funds could be extracted from the industry by the State to cover this \$180,000 if it is not forthcoming from the federal govt.

Don Collinsworth: Mr. Chairman, that may seem like a simple scenario but that's not the way its works. There is not dedicated funds and that just wouldn't happen.

?: Especially if Rick Lauber was opposed to it.

?: Half of that money is returned to the local communities, and that eliminates half of it right there.

John Peterson: Anyway, Mr. Collinsworth, you willing to put into a cover letter or into this descriptive section of the plan, the FMP? A cover letter would probably be more acceptable, Craig?

Don Collinsworth: Yes, Mr. Chairman, I am willing to do that but I think that the Council needs to express its acknowledgement that that is a requirement for the State to enter into this cooperative agreement, I guess, or to be a cooperator in this process. And then I think to the extent that the Council ought to express their support for those fiscal resources being made available for that purpose.

John Peterson: You did not make an amendment, a motion.....

?: He did but I was willing to withdraw it.

John Peterson: We have the main motion on the floor. Can you delay that until we finish with the main motion and bring it up, or do you want to do that as an interim measure. I think that's a little awkward to do that.

?: I will hold.

John Peterson: Okay, thank you.

Larry Cotter: Mr. Chairman, back to the main motion which I think incorporated the AP's recommendations. The AP's motion went on and on and at the conclusion of that issue there seemed to be another motion that spoke to having no fishery in the absence... that's not included.

?: That's not included. The main motion was specific to those AP recommendations that were included that have now been amended.

Larry Cotter: Okay. Thank you.

John Peterson: Do we have any further amendments to the main motion? Yes, Tony.

Tony Knowles: Mr. Chairman, I just have a question about the Collinsworth, given the strong feelings expressed both by the Department and by the Board would you consider under the current amended FMP to be acceptable to your Department and to the Board?

?: Mr. Chairman, I was going to ask for clarification of the motion to make sure that as I understand it the motion is to adopt the FMP. We have made some language changes on two or three pages. We've made category changes. And if that's the main motion I don't know if there were additional things woven into the AP's report because I don't have a, I guess I have a copy but I haven't read it and can't read it.

Don Collinsworth: Mr. Chairman, the main motion was to adopt some very specific recommendations by the AP which were the federal observers under category I, state observers under category III, the pot limit registration area/closed waters under category I. The last three items have been amended into category II, there were no other parts of the AP recommendation that were in the main motion.

John Peterson: That's correct. Plus the amendments that have been proposed on other segments of the plan. Okay. Are there any objections to this main motion at this time. Okay, we will have a roll call vote.

Bob Alverson: Will you re-read the motion?

Clarence Pautzke: The main motion is to adopt the AP recommended FMP with category I having federal observers and category III having state observers. And the other things that you all talked about. This was amended to change the categories for pot limit registration areas and closed waters to category II. The second amendment was the enforcement language where we deleted some, on the request of the Admiral. The third was the annual hearing process to allow us to conform to whatever the Board does. The fourth amendment... No, the third one was deleting the annual hearing in Seattle. The fourth one was the annual cycle, in going to say every-other-year. And the fifth one had to do with Larry Cotter's suggestions on the Pacific Northwest Advisory Committee. And those are the five amendments to the main motion.

John Peterson: We'll have a roll call vote on that, Mr. Pautzke.

Clarence Pautzke: Mr. Dyson, no; Mr. Knowles, no; Mr. Mace, yes; Mr. Mitchell, no; Mr. Pennoyer, yes; Mr. Winther, no; Mr. Alverson, yes; Mr. Blum, yes; Mr. Collinsworth, no; Mr. Cotter, yes; Mr. Peterson, yes. Pass.

John Peterson: Now, Mr. Collinsworth, since that passed do you want to make a motion regarding the covering letter?

Don Collinsworth: Yes. The elements of the cover letter, just so we are clear, I think that the Council in adopting this FMP acknowledges that as a requirement of the additional cost to the State should be covered by the federal govt and we recommend that the Secretary provide the fiscal resources necessary to cover those additional costs.

?: Should or will.

Don Collinsworth: Well, that we acknowledge it as an essential requirement that they be provided.

?: Second.

John Peterson: Is there any discussion on this? Are there any objections to this? The motion passes. I believe, gentlemen, that concludes our activity on crab. We'll take a 10 minute break and when we come back we will be in Executive Session.



NPFVOA

**COMMENTS RELATIVE TO THE BS/AI KING AND TANNER CRAB FMP
Submitted by
NORTH PACIFIC FISHING VESSEL OWNERS' ASSOCIATION**

JANUARY 14, 1989

The following comments are submitted to the North Pacific Fishery Management Council pursuant to public notice on behalf of the members of the North Pacific Fishing Vessel Owners' Association (NPFVOA), Seattle, Washington. Previous comments on the crab FMP issue submitted by NPFVOA are hereby incorporated by reference and restated for the record.

SUMMARY

The North Pacific Fishing Vessel Owners' Association has worked with the Council's Crab Management Committee throughout development of the present draft FMP. In June 1988, NPFVOA endorsed a consensus draft (which included acceptance by the representative from ADF & G) and testified before this Council that the plan should be sent out for review and subsequently adopted by the Council. The draft FMP was changed, however, following the September 1988, meeting of the Crab Management Committee because of objections raised by the State of Alaska Board of Fisheries which had previously not participated in the process.

The present draft FMP, therefore, includes material and options for management measures different from the draft previously endorsed by NPFVOA. These comments as they address the adequacy of the November 1988, draft will be limited to those portions of the plan which were changed following the September 1988, meeting.

The Council is now called upon to decide whether to adopt the crab plan. This association strongly urges the Council to adopt an FMP for king and Tanner crab. NPFVOA can, without further comment, accept Council adoption of the draft which was accepted by consensus of the Crab Management Committee, including acceptance by the ADF & G representative.

If adoption of the current November 1988, draft is considered, NPFVOA accepts adoption of this plan if Options 1 for placement of management measures (Registration Areas, Pot Limits and Closed Waters) into category 1 are incorporated and if certain limited restrictions on the use of socio-economic and bio-economic data are written into the plan (discussed in detail below).

Should the Council reject this FMP, NPFVOA favors attaining a Federal plan prepared by the Secretary. [MFCMA, section 304]. Under this Federal plan, NMFS still has the option to contract management to the State of Alaska to provide proper, cost effective management.

WHETHER A FISHERY MANAGEMENT PLAN IS NEEDED.

Conclusion: Yes. The Magnuson Act requires that fisheries occurring within the EEZ needing conservation and management be managed pursuant to a fishery management plan. An FMP also provides stability and predictability to the fishery, allowing rational decision making by both managers and users. Additionally, having an FMP will assure equal access to the administrative process for all users of the crab resource.

Discussion: The Magnuson Act is quite clear that the BS/AI crab fisheries must be managed pursuant to a fishery management plan.

The Act, as originally passed, left no doubt that FMP's were required. The intent of Congress on this issue is important because it reflects valued principles of fairness and interstate cooperation designed into the MFCMA.

During Senate debates prior to passage of the MFCMA, the question of whether a state can manage a fishery without an FMP and the subsequent involvement of the Secretary was raised. The clear conception built into the Act is one of regional management with implementation and regulatory authority vested in the Secretary of Commerce. Senator Stevens of Alaska explained this regional management concept:

This concept employs the use of regional fisheries councils for the preparing of both a plan for the utilization of fisheries resources of the 197-mile contiguous zone, and the promulgation of regulations which would be approved and published by the Secretary, Therefore, [sic] become Federal regulations. [A LEGISLATIVE HISTORY OF THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976, WASHINGTON, D.C., OCTOBER 1976, P. 435] [HEREINAFTER CITED AS LEG.HIST.]

At various times throughout Congressional debates Senators Stevens of Alaska and Magnuson of Washington and Representative Leggett of California (Chairman of the Subcommittee on Merchant Marine and Fisheries) squarely addressed FMP issues by stating that state management was never intended; rather, fisheries were to be managed by FMP's as part of a national program. At one point California, through it attorney general, argued that the state could continue to manage shrimp beds outside California's territorial waters (beyond three miles) because the state had managed those prior to the MFCMA. The state further argued that it should continue this management on the grounds that the state had performed well.

Chairman Leggett, speaking in committee of the whole, summarized the state's question and unequivocally expressed the clear intent of Congress:

Mr. Younger argues that the bill should be amended to provide that where a State has an established "legitimate interest" in an extra-territorial resource, the "right" to manage that resource should be continued and not contravened nor preempted by Federal authority so long as no other State has a legitimate interest....

There is no arguable point of law here that the Federal Government is other than clearly the party with proper constitutional jurisdiction. Recent

Supreme Court decisions--for example, United States against Maine; United States against Alaska--have clearly established the Federal right to manage the resources beyond the 3-mile territorial sea. [LEG.HIST., P. 846]

Congressman Leggett concluded:

Accordingly, California interests in the resource will still be protected. California would continue to have a meaningful role in the regulation of this resource through the statutory--proposed--functions of the Pacific Marine Fisheries Council to which it would be a member. But to seek to legislatively provide for continued State jurisdiction beyond State waters would be asking for a spate of similar exceptions by other States and would be unnecessarily confusing. [LEG.HIST., P. 847]

FMP Needed Under 1985 Amendments

The Act was amended in 1985, but this new language does not render the FMP argument moot. The 1985 amendments inserted the language regarding a fishery "that requires conservation and management." [PL 97-453].

(h) FUNCTIONS--Each Council shall, in accordance with the provisions of this Act--

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority that requires conservation and management, and from time to time, such amendments to each such plan as are necessary; [MAGNUSON FISHERIES CONSERVATION AND MANAGEMENT ACT OF 1976, 16 USC 1801 ET SEQ. HEREINAFTER CITED AS MFCMA].

The BS/AI crab fisheries require conservation and management under the meaning of the Act as amended in 1985. In fact, the Council determined that an FMP is needed when it directed the Crab Management Committee to develop an FMP and gave that committee specific guidance regarding the plan's contents.

Opponents of crab FMP adoption cite 50 CFR 602.17 (b) (2) (iii) as demonstrating that there is no "requirement for conservation and management" because the State of Alaska is already managing the resource. This is an error. An FMP is required for this fishery for several reasons.

These guidelines (50 CFR 602.17) which discuss the National Standards are advisory only for the purpose of providing guidance to the Councils in decision making. These guidelines are not obligatory and cannot be read literally. Careful analysis shows that the Council must begin its determination from the assumption that a fishery is in need of conservation and management. [50 CFR 602]. From this assumption, the Council must then proceed to examine ALL of the criteria used as guidelines. Taking one or two from the list out of context is totally inappropriate.

Generally, several of the management measures anticipated by the state are controversial in nature and have the unavoidable impact of allocation, decreased efficiency and increased burdens on the larger vessels in the fleet. As such, the Council is obliged to strictly scrutinize any relevant factors, including indirect effects. [SEE, 50 CFR 602, SUBPT. B, APP A].

The Council should decide that an FMP for this fishery is necessary. Under the guidelines, National Standard 7, an FMP is appropriate where it "would serve some useful purpose and where the present or future benefits of regulation would justify the costs." [50 CFR 602.17 (b)]. There is no doubt that regulation of the BS/AI crab fisheries is needed. Thus, the question is whether an FMP will serve some useful purpose. The answer clearly is yes. Having an FMP in place is extremely beneficial in a fishery having strong interstate impacts, large investment by harvesters and processors and large fluctuations in the resources and effort. An FMP lends stability and predictability to the industry and serves as a flexible tool for long-term management.

Examining each of the suggested criteria for Council guidance one can only conclude that an FMP is mandated: [50 CFR 602].

- (i) The importance of the fishery to the Nation and to the regional economy.

The regional economy in this fishery includes the states of Washington, Oregon and Alaska. The regional economy is impacted positively by this fishery. Probably the greatest impacts are related to Washington State residents since they represent the greatest investment and participation in the fishery. This fact should be considered by the Council as favoring management through an FMP.

- (ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

The crab stocks are subject to intense fishing pressure and have a history of fluctuations. Management by an FMP will not have a negative impact on the stocks because adequate protections for prompt, effective in-season adjustments and criteria for establishing GHL's are clearly strengths of the draft FMP.

- (iii) The extent to which the fishery could be or is already adequately managed by the States, . . .

Several problems arise when addressing the specific question of whether the BS/AI crab fishery is "adequately" managed without and FMP. The following issues clearly show that although the day-to-day management by the State of Alaska may be as good as one can achieve, there are certain inherent inadequacies which render an FMP mandatory.

1. Because non-residents account for the majority of the BS/AI crab fisheries in terms of numbers of vessels, catch, and processing, it is important that they have access to the management process and assurance that their preferences are adequately considered. [EA/RIR, DECEMBER 1, 1988]. Without an FMP, non-residents of Alaska, although they can participate in the Board of Fisheries regulatory process in Alaska, face increased administrative burdens and expenses. In addition, the FMP was considered important because it provided an improved petition and appeals process which assured all participants adequate access to the process on a regional and national level. Without an FMP, there is a risk of inadequate participation and appeals opportunity for certain classes of participants.

2. The fishery cannot be adequately managed by the state without an FMP. Without an FMP it may be impossible to extend fishery regulations to all vessels. There is no legal mechanism to extend state jurisdiction of all vessels fishing in the EEZ. [SEE, EA/RIR, DECEMBER 1, 1988, P. 3]. The Magnuson Act specifically limits state jurisdiction over vessels in the EEZ to those registered under the laws of the state. [MFCMA SECTION 306 (3)]. Thus, under Federal and state law, a vessel which does not enter state waters cannot be required to register with the state and therefore would remain totally unregulated in the absence of an FMP. [EA/RIR, DECEMBER 1, 1988, P. 3].

3. State law requires that ADF &G and the Board of Fisheries manage for the benefit of Alaska. Whether real or perceived, this situation poses a conflict of interest argument in the absence of an FMP. [SEE, 50 CFR 602.17 (iv)].

4. Where strong interstate participation exists, the risks of certain conflicts prevail. The Magnuson Act did not intend a single state to manage an interstate fishery. The 1985 amendments did not change this intent. Senator Stevens of Alaska first explained this concept as the driving force for Council management through and FMP process:

They [Councils] recommend regulations. They become Federal regulations by virtue of the approval by the Secretary and promulgation by him so they will then be enforceable by the Federal Government rather than by the State governments because there is, in all instances but one, more than one State government involved. [LEG.HIST. P. 492].

In the BS/AI crab fisheries there are unavoidable interstate issues. A majority of the participants are from states other than Alaska. State of Alaska laws (such as landing laws and prohibitions on export of live crab out of state) may be unconstitutional restrictions on interstate commerce. Wherever these types of conflicts are "possible" the Council should look carefully at requiring an FMP.

Again, this fishery cannot be adequately managed without an FMP. An FMP is required. This was recognized by the Council when it directed the Crab Management Committee to develop this plan. The EA/RIR of December 1, 1988, states this fact most clearly:

It is the Council's intention to implement a king and Tanner crab FMP for the BSAI area that will, to the greatest extent possible, prevent potential problems that might arise in the absence of an FMP while averting those associated with having an FMP. . . . It is also the Council's intention to implement such an FMP without further undue delay.

The FMP now being considered by the Council (incorporating Option 1 management measures) is a proper compromise solution to management within the BS/AI area.

- (iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

The Council must recognize the existence of competing interests and the potential for conflicts among user groups. An FMP can and will further the resolution of such problems. The dominance of non-Alaskan residents in the fisheries and the apparent competition for the resource by residents of various states, competition by vessels of various sizes and the potential for rapid expansion of the fleet (JVP trawlers, for example, may convert to crab) raise the potential for competition and conflict. The stability afforded by an FMP and the availability of equal access to all management cycles and appeals will definitely further that resolution. [SEE ALSO, EA/RIR, SECT. 3.1, DECEMBER 1, 1988].

- (v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

See the discussion in the EA/RIR of December 1, 1988.

- (vi) The costs associated with an FMP, balanced against the benefits. . .

Significant benefits will derive from an FMP. The Council must determine whether those benefits are justified in terms of increased costs, if any, of management through an FMP. Adoption of the November 1988, draft FMP (with Option 1 management measures) clearly is the proper course.

Management costs will NOT increase substantially, if at all, by adoption of the draft FMP. Benefits to participants, however, will be greatly enhanced. Thus, the clear conclusion is that the benefits far outweigh the costs with having the draft FMP in place. [SEE, EA/RIR, SECT. 6.0, DECEMBER 1, 1988].

Each of these guideline criteria used by the Council demonstrates the clear advantages to having an FMP. Where such clear guidance is available, the Council should adopt the draft FMP.

WHETHER THE NOVEMBER 28, 1988 DRAFT FMP SHOULD BE ADOPTED.

The previous draft as adopted by the Crab Management Committee in June 1988, is acceptable without change or further comment.

Conclusion: Yes, the November 28, 1988, Draft FMP represents a negotiated position developed pursuant to Council mandate by the Crab Management Committee. The plan corrects prior plan deficiencies by allowing flexible, prompt inseason action through state management action and provides adequate Federal oversight and appeals procedures. NPFVOA favors adoption of Options 1 for placement of Pot Limits, Exclusive Registration Areas and Closed Waters into Category 1 measures (see, page 8-2, draft FMP) and stresses that certain limitations should be placed on the use of socio-economic and bio-economic data.

Discussion of Options for Management Measures.

The November 1988, draft FMP identifies three management measures on which there is disagreement--

Pot Limits: NPFVOA strongly favors Option 1--placing this management measure in Category 1 (fixed in the FMP).

The State of Alaska has failed to provide adequate justification for this management measure. The use of pot limits historically has been controversial, has placed inefficiency on the fleets and has created conflict between vessels. [SEE, 50 CFR 602.15 AND 602.17 (d)(1)]. Additionally, pot limits in a high seas fishery such as the Bering Sea are unenforceable and as such cannot be expected to achieve the biological conservation objective.

If faced with a stock so limited that pot limits are needed in order to conduct a fishery, NPFVOA favors having no fishing effort at all.

Registration Areas: NPFVOA strongly favors Option 1--placing this management measure in Category 1.

Option 1 recognizes and incorporates existing State of Alaska registration areas into the FMP. The state remains free to change these areas, but must do so through a plan amendment. There is no excessive burden placed on the state under this option. Establishment of Exclusive Registration Areas or expansion of existing areas are not measures of an emergency of exigent nature. An amendment cycle, therefore, does not place a restraint on the state great enough to justify discretionary use of use controversial measures.

Under Option 2, the November FMP draft lists six factors to be considered before expanding existing areas or creating Exclusive Registration Areas. These serve as the criteria for "frameworking" management measures in the FMP. These six criteria are inadequate to justify these management measures because they primarily are based on economic factors which are likely to result in conflict and economic allocation. These criteria do not establish a sound management objective.

Additionally, use of Exclusive Registration Areas is a form of effort limitation, economic allocation among U.S. interests and prevents efficient use of vessels by limiting their mobility. Under Option 1, the state retains all of the management tools, but has only a limited restriction by requiring an FMP amendment.

Closed Waters: NPFVOA strongly favors placing this management measure in Category 1.

Option 1 incorporates existing closed waters into the FMP. Changes within the EEZ are permitted as needed, providing the state follows the FMP amendment process. Nothing in the law or this FMP will limit the state's current ability to adjust closed areas for subsistence purposes within state water. Since subsistence fisheries concerns are often near shore, this option should pose little, if any, difficulty for the state.

Under Option 2, the state would have broad discretion, although some framework guidelines are provided, to expand and add new closed waters. The State of Alaska has failed to clearly demonstrate the need for discretionary changes in closed waters within the EEZ which are allowed for the single purpose of providing for subsistence fisheries. The State of Alaska has vaguely referred to state and Federal statute (SLA-151, and Alaska Native Claims Act, 16 USC 3114) as

mandating closed waters. Before accepting the placement of closed waters in any category other than Category 1, the state must provide further explanation and justification. [SEE ALSO, NMFS COMMENTS, SEPTEMBER 1, 1988].

Can Fisheries Be Managed Based on Economic Data?

No. Socio-economic and bio-economic data alone may not be used to justify management measures.

The November 1988, Draft FMP includes new material on socio-economic and bio-economic data which was added after NPFVOA endorsed the consensus draft. [SEE, PAGES 7-3, 7-4 AND 7-5]. These descriptions of using economic data for management measures include no limitation on such use, except for a rather vague statement on page 7-2: "The maintenance of adequate reproductive potential in each crab stock will take precedence over economic and social considerations." [NOVEMBER DRAFT FMP].

The Act and the 602 Guidelines clearly establish that economic allocation alone may not be used to justify management measures. In addition, the legislative history of the Act is precise on this point, as Senator Stevens pointed out, "I want to emphasize, as far as I am concerned we are not talking about an economic matter." [LEG.HIST., P. 368]. The Council must be cautious in allowing too broad of discretion in use of socio-economic and bio-economic factors for management reasons.

Before accepting inclusion of this information in the FMP, NPFVOA suggests that the Council establish some limitations and clearly state that economic and social considerations alone may not be used to justify management measures. [SEE, 50 CFR 602 SUBPT. B, APP. A]. Specifically, on page 8-5, add to the end of the first paragraph under 8.2.1 that "market and other economic considerations (3) shall not be the sole criterion used in setting minimum size limits." Further, on page 8-9, add to the first full paragraph that "market and other economic considerations (5) alone shall not be the sole criterion used in setting GHL's."

The descriptions throughout the November draft regarding justifying management measures to maintain or improve the economic stability of coastal communities causes deep concern. This concept is inherently prone to create conflict, cause inefficiency and serves as an economic allocation scheme, potentially violating National Standards 4 and 5. [SEE, 50 CFR 602.17]. Such a local preference scheme should not be the sole criterion on which any EEZ management measures are based.

PUBLIC POLICY CONSIDERATIONS

Notwithstanding issues of law and economics, the Council should adopt an FMP to promote public policy considerations. An FMP will enhance cooperation and harmony among the various management units and resource users:

1. The Council will retain regional involvement in the management process which would otherwise be lost or extremely limited under Alternative 1, status quo.
2. The Alaska Board of Fisheries Chairman referred to a NOAA General Counsel memorandum of January 31, 1986 as justifying the status quo. This

memorandum (containing little, if any legal authority) is not dispositive of the issue and relates only to the stated purpose of recommending a revocation of the prior FMP. There was no opportunity, of course, for him to examine the current draft which develops a workable compromise program for effective management. In light of the subsequent decision by the Council to develop an FMP and the current draft, this memorandum is a moot issue.

3. As discussed above, the long-term benefits to the region and the nation of having a plan are far greater under an FMP than under management by only one of the states within this region. Any inherent competition and potential conflict, whether real or perceived, will be minimized by having an FMP, thus, promoting cooperation and harmony within the fisheries.

4. The benefits discussed above also outweigh any burdens placed on the State of Alaska under the draft FMP.

WHAT ALTERNATIVE IS APPROPRIATE IF THE COUNCIL FAILS TO ADOPT THE NOVEMBER 28, 1988 DRAFT FMP?

Conclusion: Should the Council reject adoption of an FMP and retain the status quo, NPFVOA strongly favors a Federal plan prepared and implemented by the Secretary of Commerce. [MFCMA Sect. 304]. To provide a cost effective, flexible management scheme, the Secretary can incorporate aspects of the November draft FMP and handle management under a contract with the State of Alaska.

Adoption of the draft Bering Sea/Aleutian Islands Crab FMP would formalize the following groups:

1. Crab Interim Action Committee (CIAC) - shall be established by the Council for the purpose of providing oversight of this FMP and to provide for Council review of management measures and other relevant matters. The Committee will be made up of the professional fishery managers who serve on the Council (e.g. NMFS Regional Director, ADF&G Commissioner, and WDF Director).
2. Pacific Northwest Crab Industry Advisory Committee (PNCIAC) - shall be sanctioned and operate under the Council for purposes of providing information and performing other consultation duties similar to state regional advisory committees. The PNCIAC will be industry funded and shall meet at appropriate times and places during the year to review and advise the State/Council on crab management issues, stock status information, etc. The PNCIAC could request Council review of any relevant matter by bringing issues to the attention of the CIAC described above.
3. Crab Plan Team - established by the Council to monitor FMP functions, develop amendments, and prepare environmental and socioeconomic analyses as requested by the Council. The team will be comprised of fishery biologists and resource economists obtained from management agencies and universities.

(as presented in the current Bering Sea/Aleutian Islands Crab FMP)

Table 8.1. Management measures used to manage king and Tanner crabs in the BS/AI management unit by category.

Category 1 (Fixed in FMP)	Category 2 (Frameworked in FMP)	Category 3 (Discretion of State)
Legal Gear	Minimum Size Limits	Reporting Requirements
Permit Requirements	Guideline Harvest Levels	Gear Placement and Removal
Observers	In-season Adjustments	Gear Storage
Limited Access [Reserved]	Districts, Subdistricts and Sections	Vessel Tank Inspections
	Fishing Seasons	Gear Modifications
	Sex Restrictions	Bycatch Limits (in crab fisheries)
		Other

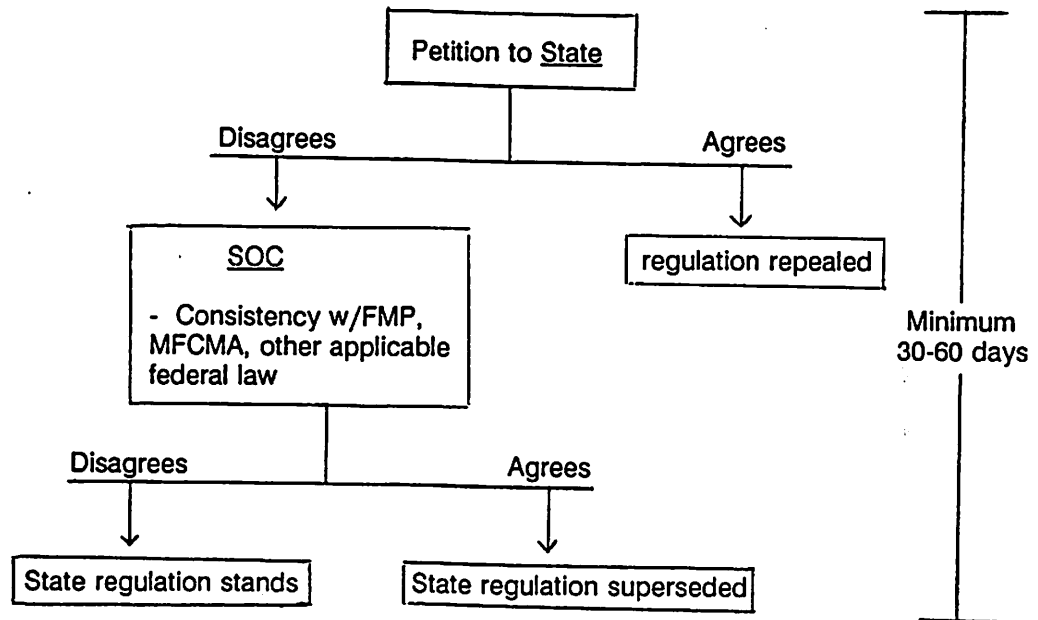
Management Category Options

- Pot Limits
 - Option 1 -- place into Category 1
 - Option 2 -- place into Category 2
- Registration Areas
 - Option 1 -- place into Category 1
 - Option 2 -- place into Category 2
- Closed Waters
 - Option 1 -- place into Category 1
 - Option 2 -- Place into Category 2

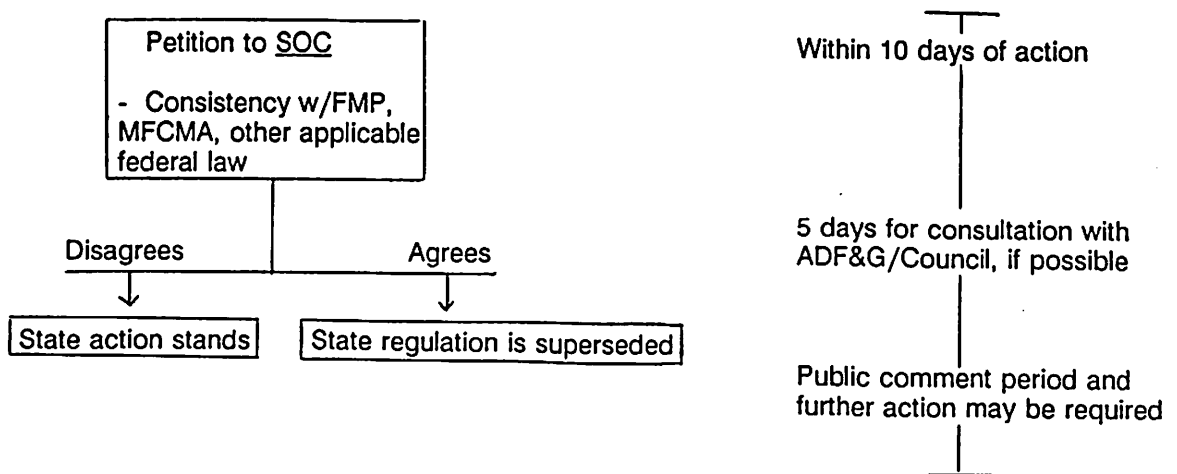
Appeals Procedure Flow Diagram

The proposed Bering Sea/Aleutian Islands Crab FMP includes a regulatory appeals process which utilizes existing State of Alaska procedures and then, if necessary, Council and Secretarial procedures. The process differs only in timeliness of actions depending on whether the petitioned regulatory action occurred pre-season or in-season.

1. Preseason Action

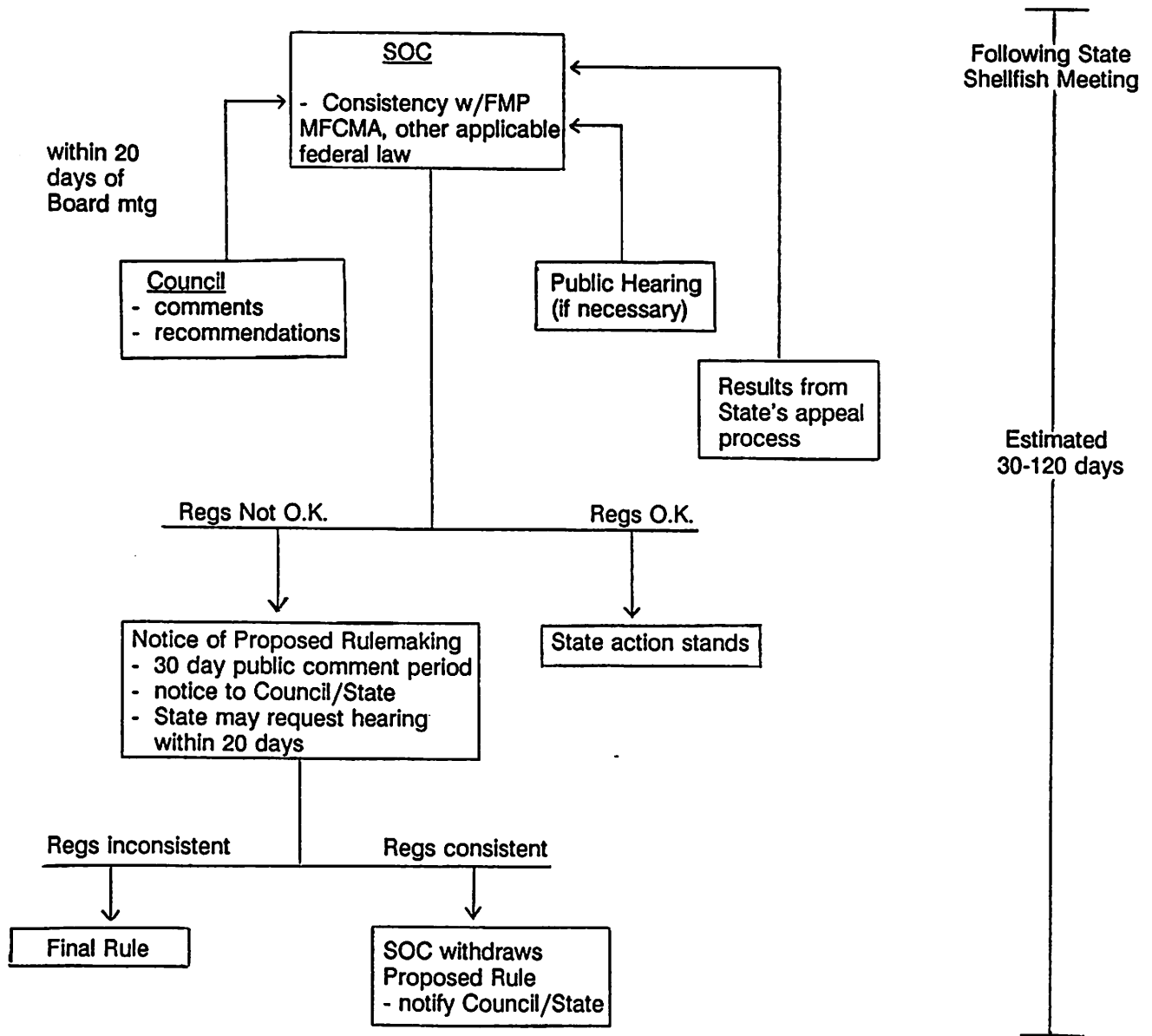


2. Inseason Action*



*State may be petitioned under its own procedures simultaneously.

General Secretarial Review of Preseason Regulatory Action Adopted by the State



MEMORANDUM

State of Alaska Department of Law

TO: Hon. Don Collinsworth
Commissioner
Dept. of Fish and Game

DATE: November 15, 1988

FILE NO.: 663-89-0200

TEL. NO.: 465-3600

SUBJECT: State residency as an
allocation criteria:
potential constitutional
problems

FROM: ^{LIS}
Larri Irene Spengler
Assistant Attorney General
Natural Resources Section

You have asked whether the Board of Fisheries may validly consider the number of state residents and nonstate residents who participate in commercial fisheries in allocating commercial fishing opportunity. From your memorandum of inquiry, we gather that the board has not considered this factor, but that there is some concern among members of the public that it might. Since there is no actual situation before us to evaluate, this memorandum will not analyze the abstract question in much depth. However, in brief, it is very likely that consideration of the residency/nonresidency of participants in commercial fisheries in making allocation decisions would raise constitutional problems.

This question arises because AS 16.05.251(e) requires the Board of Fisheries to

establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing. The criteria may, as appropriate to particular allocation decisions, include factors such as

....

(2) the number of residents and nonresidents who have participated in each fishery in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future.

In 5 AAC 39.205, the board has adopted the seven factors used as examples in AS 16.05.251(e). Neither the statute nor the regulation require the board to use all of the factors in every allocation decision, and apparently the board has chosen not to consider the state residency or nonresidency of individuals participating in commercial fisheries among which the board

allocates. That restraint on the board's part is well-advised. Allocating commercial fishing opportunity based on the state residency or nonresidency of the participants would potentially violate at least two provisions of the United States Constitution: article I, section 8, clause 3 (the commerce clause), and article IV, section 2 (the privileges and immunities clause.)

The privileges and immunities clause of the United States Constitution provides:

The citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states.

Article IV, section 2.

The Alaska Supreme Court has recognized that under United States Supreme Court decisions the "primary purpose of this clause is to prevent states from enacting measures which discriminate against nonresidents for reasons of economic protectionism." Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). It is hard to imagine how the Board of Fisheries would consider the state residency of commercial fishery participants for any other purpose than economic protectionism, potentially running afoul of the privileges and immunities clause.

The commerce clause of the United States Constitution provides:

Congress shall have power . . . to regulate commerce within foreign nations, and among the several states, and with Indian tribes.

Article I, section 8, clause 3. The test for the commerce clause analysis was discussed by the United States Supreme Court in Hughes vs. Oklahoma, 441 U.S. 322, 336 (1979). The court said that under the commerce clause it must inquire

(1) whether the challenged statute regulates evenhandedly with 'incidental' effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect;

(2) whether the statute serves a legitimate local purpose; and if so,

Hon. Don Collinsworth
Commissioner, ADF&G
Our File 663-89-0200

November 15, 1988
Page 3

(3) whether alternative means could promote this local purpose as well without discriminating against interstate commerce.

Clearly, an allocation decision which purposefully allocated commercial fishing opportunity away from nonstate residents would, in most circumstances this department can envision, discriminate against interstate commerce at least in practical effect. Thus, under the test, the analysis would be whether the allocation serves a "legitimate local purpose." Referencing back to the disapproval the United States Supreme Court has evidenced toward measures which "discriminate against nonresidents for reasons of economic protectionism," explained in Robison, it appears that an allocation based on such considerations would be constitutionally vulnerable.

As discussed above, because there is no particular situation before us to evaluate, this opinion does not contain an in-depth analysis of the possible constitutional problems with allocating commercial fishing opportunity to state residents and away from nonstate residents. However, speaking generally, allocation based on such considerations would be very likely to at least violate the United States Constitution's privileges and immunities clause and the commerce clause.

LIS:dlm

cc: Elizabeth Stewart, Director
Division of Boards
Department of Fish and Game

Ken Parker, Director
Commercial Fisheries Division
Department of Fish and Game

Gary Slaven, Chairman
Board of Fisheries
P.O. Box 205
Petersburg, AK 99833

THIS AGENDA ITEM WILL BE AVAILABLE DURING THE MEETING

THE CRAB PLANS: A BRIEF HISTORY SINCE 1982

1982: Problems Surface with Tanner Crab Plan

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 Tanner Crab Amendment 9

NMFS Region requested the Council to amend the Tanner Crab 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; State turns down king crab delegation

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 discussion paper 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 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 received formal notice on June 20, 1986 that the State had declined to accept Federal delegation of management authority for the Bering Sea king crab fishery. The framework plan had been developed in various forms over a five-year period. It was an effort by the Council to address the concerns of various user groups while acknowledging over twenty years of management of king crab by the State of Alaska. The plan had been approved by the Council in September 1983 and by the Secretary of Commerce in December 1984. However, Federal regulations had never been implemented. The State's principal objections to the delegation were: excessive Federal oversight, uncertainties in the regulatory approval process, unnecessary governmental duplication, and concerns for the degree to which discretionary authority of the Board would be constrained.

After the State officially declined the delegation, the Council decided to put the subject of king crab management on the September agenda when comments would be available 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.

Four overriding concerns were evident in the public comments. 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. The Council noted that the workgroup should not have a particular method of management in mind, but should explore all possibilities. Persons appointed to the Crab Management Committee included:

Larry Cotter, Chairman	Rudy Petersen
Lloyd Cannon	Thorn Smith
Don Collinsworth	Jeff Stephan
Bob McVey	Arni Thomson
John Winther	Bill Woods

December 1986: Council acts on Crab Management Committee recommendations

The Crab Management Committee met in Seattle on November 20, 1986 and 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.

At the December 1986 Council meeting, the committee recommended that the Council instruct the crab team to:

- (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.
- (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 recommended the Council ask the Secretary to extend the emergency rule suspending the Tanner crab regulations for another 90 days. It was their understanding that while a new plan was being developed the State of Alaska would have full management authority for the crab fisheries inside and outside three miles. The Committee also recommended the Council ask the Secretary to develop a Secretarial amendment repealing the plan.

The Council accepted the recommendations and instructed the crab plan team to develop a new king and Tanner Crab FMP for the Bering Sea/Aleutian Islands. The Council also asked the Secretary of Commerce to extend the emergency rule suspending the Tanner crab regulations for 90 days and to develop a Secretarial amendment repealing the Tanner Crab FMP.

1987-1988: Plan is developed, revised, and sent out for public review

The Crab Management Committee worked diligently on developing the plan during 1987. A draft plan and analysis were brought before the Council in September 1987 for approval for public review. It did not pass muster with the SSC and was sent back for revision. After several delays, the Council approved the plan for public review at the June 1988 meeting. It was released for review during the summer.

In September 1988, the Crab Management Committee recommended delaying until January 1989, Council consideration to allow the staff time to incorporate several changes in the plan and analysis. In the meantime the Committee had met with the State to try to resolve the State's concerns with the plan. The changes recommended by the Committee were sufficiently significant that NOAA-GC advised that the plan be re-sent to public review. This public review period lasted from December 19, 1988 until January 17, 1989. During the past four months the Crab Committee has continued to meet with industry and the State to narrow the differences between parties. The plan, with various options, is up for final approval at the January 1989 meeting.



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January 12, 1989

MEMORANDUM FOR: John Peterson, Chairman
North Pacific Fishery Management Council

FROM: GCAK - Craig R. O'Connor 

Subject: Review of Alaska Crab Laws

At the September meeting of the North Pacific Fishery Management Council (Council) I committed my office to conduct a review of existing Alaska laws pertaining to king and tanner crab management. The purpose of this review was to determine the consistency of those laws with the Council's Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (FMP), the Magnuson Fishery Conservation and Management Act, and other applicable federal law. This consistency review is provided for by Section 3 of the FMP.

The results of that review are attached. I have shared our conclusions with representatives of the Alaska Board of Fisheries and Alaska Department of Fish and Game at the meeting held in Juneau on January 7, 1989.

If there are any questions regarding the attached, I will be happy to discuss them with the Council.

cc: F/AKR - Steven Pennoyer w/attachment
GC - Jay Johnson w/attachment
GCF - Maggie Frailey w/attachment





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January 10, 1989

MEMORANDUM FOR: GCAK - Craig R. O'Connor
FROM: GCAK - Jon Pollard *Jon Pollard*
SUBJECT: Consistency Review of Alaska Crab Laws

This memorandum reviews existing State of Alaska crab statutes and regulations for consistency with the November 28, 1988, draft of the North Pacific Fishery Management Council's Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (FMP), the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable federal law. This consistency review is required by FMP § 3.0, page 3-1.

This memorandum is organized into five sections: (1) a general discussion of the origins of state management authority over fishery resources within and beyond state boundaries; (2) a description of state and Federal regulatory jurisdiction under the Magnuson Act; (3) an overview of the cooperative State and Federal crab management regime contemplated by the FMP; (4) a discussion of the scope of the consistency review; and (5) the results of the review. This memorandum draws extensively from analysis and conclusions presented in NOAA General Counsel Legal Opinion No. 93.



-2-

Origins of State Management Authority:

Authority to regulate the use and development of fishery resources has traditionally fallen within the police power of the states. This authority extends over fisheries within state waters and is enforceable against residents and nonresidents alike. However, the exercise of state authority may not discriminate against nonresidents, conflict with Federal law, or unduly burden interstate commerce.

Before implementation of the Magnuson Act, coastal states could also exercise broad fishery management authority beyond State waters. Extraterritorial effects of state landing laws could be justified by the state's legitimate conservation interest in fishery resources within state waters. In the absence of conflicting Federal law, a state could directly regulate fishing beyond its waters through laws applicable to state residents and to nonresidents with sufficient contact with the state to subject themselves to state jurisdiction.

State and Federal Jurisdiction Under the Magnuson Act:

Through passage of the Magnuson Act, the United States established exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone (EEZ). The seaward boundary of the EEZ is a line

-3-

200 miles from the baseline of the United States; its inner boundary is a line coterminous with the seaward boundary of each coastal State, three miles from the baseline in the case of Alaska.

The Magnuson Act leaves management in state waters generally to the coastal states. Magnuson Act Section 306(a)(1), 16 U.S.C. § 1856(a)(1), provides:

Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

This provision preserves for the coastal states their traditional jurisdiction over fisheries within territorial waters, subject to the paramount rights of the Federal government under the United States Constitution.

The relative roles of the state and Federal governments are quite different in the EEZ. The Magnuson Act establishes a comprehensive national management regime in the EEZ for fisheries in need of Federal conservation and management. Federal fishery regulations implementing the Magnuson Act are paramount; states may not directly or indirectly regulate any fishing vessel in the EEZ, unless it is registered under the law of that state. Magnuson Act Section 306(a)(3), 16 U.S.C. § 1856(a)(3), provides in part:

[A] State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State.

-4-

This provision reflects Congress' decision to assert Federal jurisdiction over fisheries in the EEZ while preserving, in a limited way, the states' extraterritorial authority to regulate their own registered vessels. A state may exercise that regulatory authority over registered fishing vessels in the EEZ only to the extent that:

- (1) the State's regulation is not inconsistent with any applicable Federal fishery regulation; that is,
 - (a) there are no Federal regulations for the subject fishery; or
 - (b) compliance with both Federal and State regulation is not impossible; or
 - (c) the State's regulation does not impede the complete accomplishment of the goals of applicable Federal regulation; and
- (2) the fishing vessel is "registered" under State law; and
- (3) the State's legitimate interest in its territorial waters resources justifies the direct or indirect effect of its regulation of fishing in the EEZ; and
- (4) the State's regulation neither discriminates against nonresidents nor constitutes an undue burden on interstate commerce or any other Federal right or authority.

Cooperative Management as Contemplated by the FMP:

The FMP would establish a State/Federal cooperative management regime. The FMP concludes that existing State law well conserves and manages crab resources in the Bering Sea and Aleutian Islands Management Unit to the State and chooses not to

-5-

duplicate those measures which adequately address Federal management goals. Notwithstanding such deference to the State, the FMP reserves Secretarial discretion to review for Federal consistency categories of State regulatory action and preserve for Federal regulatory action certain other types of management measures.

The FMP establishes three categories of management measures: (1) fixed measures, such as legal gear types, that are implemented by Federal regulations in the EEZ; (2) measures that the State may implement and amend, subject to Federal criteria specified in the FMP, and enforce against State-registered vessels in the EEZ; and (3) measures that the State may implement and amend, without specific Federal criteria specified in the FMP, and enforce against State-registered vessels in the EEZ.

All measures, including those implemented by the State, must be consistent with the FMP, the Magnuson Act, and other applicable Federal law; State measures which are inconsistent would be superseded in the EEZ by Federal regulatory action. The FMP encourages close coordination between State and Federal management agencies at all stages in the management process.

Scope of Federal Consistency Review:

Section 9 of the FMP establishes the Federal

-6-

consistency review procedure for all State measures applicable to State-registered vessels in the EEZ. Before FMP implementation, all State laws applicable to fishing vessels in the EEZ are subject to mandatory review by the Secretary of the United States Department of Commerce. After FMP implementation, preseason and inseason State management measures will be reviewed by the Secretary as a matter of discretion, or upon timely appeal by an interested party. Secretarial review is limited to whether the challenged State law is consistent with the FMP, the Magnuson Act, or other applicable Federal law.

NOAA General Counsel Opinion No. 93 identifies two critical issues in determining consistency: (1) whether compliance with both Federal and State law is possible; and (2) whether the State law impedes the complete accomplishment of the goals of applicable Federal regulations. As defined, consistency determinations incorporate both legal and policy components. Initial legal review will be limited to whether the State law at issue is facially consistent with the FMP, including its provisions concerning goals and management measures, the Magnuson Act, and other applicable Federal law. If facially consistent, the review will focus on whether the State law impedes the policy objectives of the FMP and implementing regulations. Inconsistencies may be remedied by amending the State law or regulation, the FMP, or both.

The consistency review procedure established by the FMP

-7-

is narrow. The Secretary will not inquire into the State's compliance with its own rulemaking requirements, enabling legislation, or other applicable State law. No judgment is made in this analysis on the merits of State laws or regulations with respect to wise conservation and management. However, nothing in the FMP is intended to limit any opportunities for interested parties to obtain review of State management actions under State law.

Initial Consistency Review of State Laws Applicable in the EEZ:

The fish and game statutes of Alaska are contained in Title 16 of the Alaska Statutes (AS). State statutes governing fishing for crab in the EEZ appear in AS Chapters 16.05, 16.10, and 16.43. State regulations governing fishing for crab in the EEZ are contained in Title 5 Alaska Administrative Code (AAC), Chapters 34, 35, and 39.

This review begins with an analysis of certain general fish and game provisions of State law. The remainder of the State laws and regulations included in this review are grouped into three major categories according to their designation in the FMP as: Category 1 - fixed measures implemented by Federal regulations in the EEZ; Category 2 - framework-type measures that the State may implement and amend, subject to Federal criteria specified in the FMP; and Category 3 - measures that the State

-8-

may implement and amend, without specific Federal criteria specified in the FMP.

General Provisions:

Vessel Registration:

Under AS 16.05.475, a person may not employ a fishing vessel within State waters unless that vessel is registered under the law of the State. The statute authorizes the State Board of Fisheries (Board) to define by regulation the term "registered under the law of the State." The regulatory definition, 5 AAC 39.120, provides that registration is complete upon display of a vessel license required under AS 16.05.530 and compliance with all applicable fishing district and subdistrict registration requirements. None of these State requirements appears inconsistent with the FMP, the Magnuson Act, or other applicable Federal law.

AS 16.10.180 - 16.10.230 contains the State legislature's assertion of authority to regulate fishing outside State waters. This extraterritorial authority is assumed by the FMP, and nothing in these statutes appears inconsistent with the FMP, the Magnuson Act, or other applicable Federal law.

Other:

AS 16.10.240 provides that a person may not "take out of, ship, transport, or send from this state any live king crab, species Paralithodes camtschatica, . . . or live tanner crab, species Chionoecetes bairdi, except that all of these species may be shipped live via air freight after prepackaging." This restriction applies to two of the species managed under the FMP. A plain reading of the statute would prohibit persons from taking live shipments of these two species from State waters via freighter, regardless of the origin of the catch. Persons would also be prohibited from carrying live catch of these species onboard a fishing vessel which fishes both in State waters and in the EEZ. Unless this statute is supported by a strong justification, it would seem vulnerable to Constitutional challenge as an undue burden on interstate commerce.

Other general provisions either do not apply within the management unit or do not raise any particular consistency concerns.

Category 1 Measures:

Legal Gear:

The State king crab regulations at 5 AAC 24.050(a) specify king crab pots and ring nets as legal fishing gear,

unless otherwise provided. More specific State king crab regulations at 5 AAC 34.625, 34.725, 34.825, and 34.925 restrict legal gear within the FMP management unit to king crab pots only. State Tanner crab regulations at 5 AAC 35.050(a) specify Tanner crab pots, ring nets, or diving gear as legal fishing gear for Tanner crab, unless otherwise provided. These regulations are entirely consistent with section 8.1.1 of the FMP, which states that "[l]egal gear for commercial king crab fisheries is limited to pots (traps). Legal gear for commercial Tanner crab fisheries is limited to pots (traps), ring nets, and diving gear." However, the FMP does not present any rationale for the different gear specifications set out in section 8.1.1.

Other State regulations further define the terms "king crab pot" and "Tanner crab pot," specify required escape mechanisms for all pots, and specify gear identification requirements. Nothing in these regulations appears inconsistent with the FMP, the Magnuson Act, or other applicable Federal law.

Permit Requirements:

Section 8.1.2 of the FMP imposes no Federal permit requirements for the fishery. However, the FMP "assumes that all crab fishermen are licensed and vessels are licensed and registered under the laws of the State, and as such, while fishing in the EEZ are subject to all State regulations that are

consistent with the FMP, Magnuson Act, and other applicable Federal law."

There are no apparent consistency issues with respect to the State's vessel licensing requirements, registration certificates, brown king crab permits, and permits required of processing vessels. State statutes at AS 16.05.450, 460, 470, 480, and 680(1) and (2) establish a crewperson commercial license system that arguably discriminates on the basis of State residence. Under AS 16.05.480, the fee for the license is \$ 30 for State residents and \$ 90 for nonresidents. Assuming a rational basis for the statute, such a slight cost difference would probably withstand Constitutional challenge.

Other State licensing and permitting provisions either do not apply within the management unit or do not raise any particular consistency concerns.

Observers:

Under AS 16.05.050(14), 16.05.251(a)(13), and 5 AAC 39.645, the State has imposed a shellfish onboard observer program to obtain biological and management data from vessels processing specified shellfish species, including Chionoecetes bairdi, red king crab, blue king crab, and brown king crab. The FMP at section 8.1.3 authorizes the State to establish an observer program for the crab fishery to obtain information

necessary to manage the crab stocks in the management unit. Nothing in the State's program appears facially inconsistent with the FMP, the Magnuson Act, or other applicable Federal law.

Limited Access:

The FMP prohibits the State from implementing limited access measures in the crab fisheries in the management unit. No consistency issues are apparent.

Category 2 Measures:

The FMP authorizes the State to implement and amend Category 2 measures, subject to Federal criteria specified in the FMP. Category 2 measures include season, size, and sex restrictions, guideline harvest levels, inseason adjustments, and designation of districts, subdistricts, and sections. State regulations implementing Category 2 measures appear facially consistent with the FMP, the Magnuson Act, and other applicable Federal law.

Category 3 Measures:

The FMP authorizes the State to establish and amend Category 3 measures, without any specific Federal criteria

specified in the FMP. Category 3 measures include reporting requirements, vessel tank inspections, and regulations concerning gear storage, placement, and removal. "Other measures" not described in the FMP are also included in this category. State regulations implementing Category 3 measures appear facially consistent with the FMP, the Magnuson Act, and other applicable Federal law.

Pot Limits, Closed Waters, and Registration Areas:

The FMP identifies alternatives for pot limits, closed waters, and registration areas as either Category 1 or Category 2 measures. This consistency review will address each alternative.

Pot Limits:

FMP Alternative 1 strictly prohibits State and Federal restrictions on the number of crab pots a vessel may employ in the management unit.¹ FMP Alternative 2 would allow the State

¹ Pot limits would be prohibited under this alternative, solely because their use "may pit large vessel fishermen against small vessel fishermen by impeding the catching efficiency of the larger vessels to a greater extent." FMP § 3.4.1, page 8-29. It is interesting to note that the FMP does not prohibit other types of measures, such as vessel length restrictions or vessel horsepower limitations, which would disproportionately affect large vessels.

to establish pot limits in "special situations" and only if the limits are designed in a "nondiscriminatory manner." FMP § 8.4.1, page 8-30. The FMP identifies two examples of such special situations, but tacitly acknowledges that other situations may also warrant the use of pot limits.²

Currently there are no State laws restricting the number of pots a vessel may employ in the management unit. Consequently, no consistency issues are apparent.

Closed Waters and Subsistence Requirements:

AS 16.05.258 requires the Board to adopt regulations providing for subsistence fishing. It requires that subsistence be the priority use of fishery resources, and also requires that priorities among subsistence users be established on customary and direct dependence, local residency, and availability of alternative resources. Current State regulations at 5 AAC 34.935 prohibit commercial king crab fishing in Norton Sound and around St. Lawrence, King, and Little Diomedé Islands.

FMP Alternative 1 specifically authorizes protecting subsistence fisheries by prohibiting commercial fishing in the waters described in 5 AAC 34.935 and by providing for State

² As drafted, FMP Alternative 2 on pot limits would seem to be a Category 3 measure rather than a Category 2 "framework" measure; the FMP does not identify any Federal criteria for the State to meet when establishing pot-limits.

emergency closures when continued commercial fishing could threaten subsistence harvests. FMP Alternative 2 is identical, except that it would allow the State to designate new closures, or expand or reduce existing closures, "in order to meet State and Federal subsistence requirements." FMP § 8.4.3, page 8-40. ³

The use of local residency as a criterion for subsistence allocations does not in itself discriminate on the basis of State residence, because it would exclude all nonresidents of the local areas, Alaska residents and nonresidents alike, from enjoying fishing priorities.

No other consistency issues are apparent.

Statistical/Registration Areas:

State regulations establish nine statistical areas for the king crab fishery (5 AAC 34.005) and five statistical areas for the Tanner crab fishery (5 AAC 35.005). Each statistical area consists of a "registration area," comprised of all the State waters within the statistical area, and an "adjacent seaward biological influence zone (ASBIZ)," comprised of all waters within the statistical area which are not part of the

³ Alternative 2 on Closed Waters should more properly be a Category 3 measure. As drafted, Alternative 2 would allow the State the flexibility to establish commercial fishing closures to protect subsistence fisheries without any criteria or specific restrictions in the FMP, other than the general requirement that the closure be necessary "to meet State and Federal subsistence requirements."

registration area. State regulations at 5 AAC 34.010 and 35.010 provide that all king crab and Tanner crab regulations applicable to a registration area also apply in its ASBIZ, unless the Commissioner of the Alaska Department of Fish and Game suspends application in the ASBIZ. The FMP defines registration areas as being coincident with the State's statistical areas, including the ASBIZ. FMP § 4.0, page 4-4.

Five of these State statistical areas fall generally within the FMP management unit: king crab Areas O (Dutch Harbor), R (Adak), T (Bristol Bay), Q (Bering Sea), and Tanner crab Area J (Westward). However, these statistical areas do not necessarily correspond with the waters of the EEZ within the management unit. For example, king crab Areas O and R have as their seaward boundaries the 800 fathom depth contour, which falls within the outer boundary of the EEZ. 5 AAC 34.600 and 34.600. Parts of the seaward boundaries of Tanner crab Area J also fall within the outer boundary of the EEZ. Consequently, State regulations applicable to a statistical/registration area apparently do not govern fishing for crab in the EEZ beyond the statistical areas.

The State's limitation of its crab management authority to the statistical area does not raise any particular consistency issues. However, fishery managers should be aware of the geographic limits the State has imposed upon its crab management jurisdiction; vessels fishing for crab within the

management unit, but outside the State statistical area, would not be subject to any of the FMP's Category 1 or Category 2 measures.

State statistical areas are further subdivided into districts and sections. Only king crab Statistical Area T is not subdivided. State regulations require vessels to register before fishing in these areas, and may require vessels to register for particular districts and sections. Registration may be exclusive or nonexclusive.

FMP Alternative 1 would freeze the State's statistical/registration areas as they are now defined, and would prohibit the State from making any changes regarding exclusive area designation. FMP Alternative 2 is identical, except it would allow the State to make changes regarding exclusive area designation in accordance with criteria specified in the FMP. Current State regulations appear facially consistent with either FMP alternative, the Magnuson Act, and other Federal law.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

BOARD OF FISHERIES

AGENDA D-1
JANUARY 1989
SUPPLEMENTAL
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January 9, 1989

Dear Mr. Peterson:

The Alaska Board of Fisheries discussed the revised draft Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan. Bob Lochman and I summarized our January 7, 1989 meeting with Commissioner Collinsworth and ADF&G staff, Larry Cotter, Ray Baglin, Dale Evans, Craig O'Connor, Jonathon Pollard, Steve Davis, Jim Brooks, Ken Larson, Arni Thomson, Chuck Cohen, and Ray Gillispie.

I am now prepared to forward the board's comments to you. It should be noted that Joe Demmert and Jesse Foster were not present, but that all the other board members participated in this discussion.

First and foremost the board believes that there is really no reason to implement an FMP at this time. In his memorandum dated January 31, 1986, NOAA General Counsel, Pat Travers, indicated that, of the original three main reasons to depart from status quo, only one reason remained: the political pressure from some non-resident participants in the fishery who feared discrimination by the State of Alaska. As General Counsel Travers pointed out, since the Magnuson Act amendments, the Secretary of Commerce can effectively nullify state regulations that violate the Magnuson Act. Additionally, you have an opinion from the Attorney General which confirms our belief that the Board of Fisheries cannot enact regulations primarily for the purpose of discriminating against nonresidents.

Since this remains the primary justification for implementing an FMP, we believe that it is inappropriate to go ahead with a plan that solves no real problems and addresses no substantive issues. This seems particularly important in light of the costs associated with implementation. The state currently spends more than \$2 million on management of these fisheries. Adoption of the proposed FMP will increase that financial burden unnecessarily. We want to emphasize that absent some definite benefit to the resource or the users -- it seems ludicrous to spend additional money.

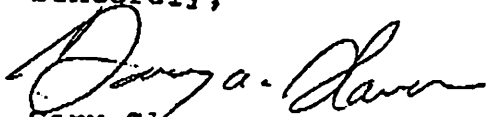
Specific comments on the current draft should be viewed in this context. The board agrees with General Counsel Travers that the fluctuating nature of both the king and Tanner crab stocks in this area make it unlikely that a plan could be developed that would framework key management decisions adequately. We believe that this plan fails in that regard.

If the North Pacific Fishery Management Council proceeds with adoption of this FMP, the Board of Fisheries cannot recommend state acceptance unless the current draft is revised to:

1. provide for the current board review cycle (every other year for king and Tanner crab), and allow the board the flexibility to modify that cycle if necessary;
2. include pot limits, registration areas and closed waters in category 2; and
3. place the State of Alaska observer program in category 3.

In summary, we appreciate the council's efforts to respond to concerns raised by a segment of the industry. No matter what the final fate of this draft, the board supports developing a better relationship between the crab industry, the department, and the board through industry - state meetings during the board's winter meetings cycle; and encourages the development of an industry funded Pacific Northwest crab advisory committee to enhance industry participation in the board process.

Sincerely,



Gary Slaven
Chairman

U.S. Department
of Transportation
United States
Coast Guard

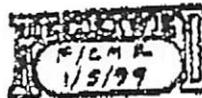


Commandant
United States Coast Guard

AGENDA D-1 SUPPLEMENTAL
JANUARY 1989

16207.2

Mr. Joe P. Clem
Chief, Fisheries Management
Division
National Marine Fisheries Service
Washington, D.C. 20235



JAN - 3 1989

Dear Mr. Clem:

I have reviewed the Draft Bering Sea/Aleutian Islands Commercial King and Tanner Crab Fishery Management Plan (FMP) and the draft proposed rule. The Coast Guard does not oppose the implementation of this FMP, however, I would like to clarify the Coast Guard's role in the enforcement of the regulations.

The Coast Guard intends to conduct enforcement of crab regulations in conjunction with regular patrols in the Bering Sea/Aleutian Islands area. The Coast Guard's role will not be to direct enforcement resources to the State (page 2-11). The Coast Guard plays the major role in the enforcement of foreign fishing regulations and search and rescue in the Bering Sea/Aleutian Islands area. This alone places a large demand on our limited resources. We intend to work in cooperation with the State, but only to the extent that our resources will allow.

Thank you for the opportunity to comment on this FMP. If you have any questions, please contact LTJG Cox at (202) 267-1155.

Sincerely,

S. J. Dennis

S. J. DENNIS
Captain, U.S. Coast Guard
Chief, Operational Law Enforcement
Division
By direction of the Commandant

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

January 13, 1989

Mr. Clarence Pautzke
Executive Director
North Pacific Fishery Management Council
P.O. Box 3136
Anchorage, AK 99510

Dear Mr. Pautzke:

I would like to comment on the November 28, 1988, draft Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands. I remain very supportive of cooperative efforts between the Board of Fisheries (BOF), Alaska Department of Fish and Game (ADF&G), National Marine Fisheries Service (NMFS), and North Pacific Fishery Management Council (NPFMC) for stock assessment, fishery data collection, and management of the king and Tanner crab fisheries of the Bering Sea and Aleutian Islands. The current draft FMP represents a noble effort toward formalizing commitments by state and federal agencies to these fisheries. Now, our challenge is to decide whether this effort has resulted in a plan that, when implemented, will resolve critical problems and provide meaningful benefits to participants in these fisheries, regulatory agencies, and the nation overall.

To a large extent, the draft FMP appears to be designed to alleviate two concerns: (1) fears of discrimination against nonresident participants in these fisheries; and (2) concerns about insufficient access to the state's regulatory process by nonresidents. Four tangible benefits of plan implementation are that the FMP: (1) establishes a Pacific Northwest Crab Industry Advisory Committee (PNCIAC); (2) establishes a frequent meeting schedule to discuss crab management; (3) formalizes a cooperative relationship between NMFS, NPFMC, ADF&G and BOF; and (4) provides a mechanism for federal review of state crab management.

Unfortunately, this short list of problems resolved and benefits accrued from plan implementation appears discordant with resultant increases in staff efforts and fiscal burdens placed upon state and federal agencies to administer the additional regulatory process. I propose that a similar resolution can be achieved much more efficiently through five modifications to the current regulatory system.

Mr. Clarence Pautzke

2

January 13, 1989

First, I do not believe that fear of discrimination (concern 1) remains a valid issue. The U.S. Constitution already prohibits discrimination against nonresidents in allocation decisions in commercial fisheries, as described in a recent memorandum by Ms. Larri Spengler, Assistant Attorney General for the State of Alaska. To embrace this fact, the ADF&G and BOF could formally adopt a policy of nondiscrimination based on residency for allocation decisions in commercial fisheries.

Second, an industry-funded PNCIAC with rights of access to the management process equal to other state advisory committees can be sanctioned without implementing the FMP. The board has a printed set of rules and procedures for advisory committees that would apply to this advisory committee as it does for all others. To make it easier for those unfamiliar with the state system to get involved, an informational guide could be developed that describes the state regulatory system (including appeals process) in detail. These actions should eliminate the second concern and provide for the first benefit that I listed earlier.

Third, regular meetings of ADF&G, BOF, NMFS and interested crab industry members could be scheduled for at least one evening during the week of two NPFMC meetings annually in Anchorage. Thus, the advantages resulting from a more frequent meeting schedule (benefit 2) would accrue in lieu of an FMP.

Fourth, to achieve the third benefit, I propose the development of a joint statement of principles between the State and National Marine Fisheries Service (NMFS) that formalizes the current cooperative data collection activities, fishery data analyses and management of the Bering Sea and Aleutian Island crab fisheries. A memorandum of understanding could also be developed between the state and U.S. Coast Guard that formalizes enforcement commitments toward the Bering Sea and Aleutian Islands crab fisheries.

Last, the statement of principles could provide for an annual review by the Secretary of Commerce that leads to a finding concerning the state's management of the BS/AI crab fisheries in compliance with the Magnuson Fishery Conservation and Management Act and other applicable federal law. This provides the advantages of annual federal review of state regulatory actions (benefit 4).

I offer the preceding comments in response to the impending question, "do we need a federal FMP for king and Tanner crab fisheries in the Bering Sea and Aleutian Islands?" Indeed, this is a heavy question, but it is no less weighty than the consideration of costs incurred by both state and federal governments to administer the plan if implemented. We must ascertain that the product is worth its cost.

Mr. Clarence Pautzke

3

January 13, 1989

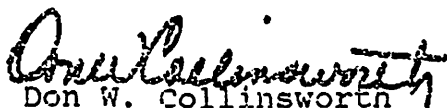
Should these remedial modifications to the status quo be unacceptable to the council, I offer the following comments on the current draft FMP. Three management measures (pot limits, registration areas, and closed waters) are listed as options for category 1 (fixed) or category 2 (frameworked). In all three instances, I prefer category 2 to provide reasonable access by the state to these management tools. Primarily, we prefer a framework for pot limits and registration areas to not foreclose the option of providing fishing opportunities on reduced stocks with harvestable surpluses that cannot sustain fisheries without some means of effort limitation. Closed waters must be frameworked to grant the state this tool to meet subsistence mandates, if necessary.

The FMP describes the possibility of a federal observer program as a category 1 management measure. However, the lack of a state observer program as a category 3 measure appears to be a major oversight, because this program is one of the existing management tools.

Finally, the FMP does not address \$181,400 in marginal costs that I described in my September 16, 1988, letter to you. Because some of the previous requirements for detailed economic analyses are reduced in the recent draft, there may be less need for a full-time economist. However, for plan implementation I feel that the services of at least a part-time economist will be needed in addition to other costs outlined previously.

In conclusion, the draft FMP need not be implemented to resolve the problems it addresses and to accrue the benefits it proposes to achieve. I have outlined five steps that I believe would go a long way toward providing for these same advantages without the burden of administering an additional regulatory system. However, if this proposal is unacceptable to the council, then I support the draft FMP modified to accommodate my comments on pot limits, registration areas, closed waters, state observers, and marginal costs of implementation.

Sincerely,


Don W. Collinsworth
Commissioner