

M E M O R A N D U M

TO: Council, SSC and AP Members

FROM: Jim H. Branson
Executive Director

DATE: April 23, 1984

SUBJECT: Board of Fisheries/Council Relationship

ACTION REQUIRED

Review existing agreements between the Board and Council and decide whether they are adequate.

BACKGROUND

The State Board of Fisheries and the Council are parties to a Joint Memorandum of Understanding (Attachment A) and Joint Statement of Principles for the management of king crab (Attachment B). The Board and Council are also beneficiaries of a Cooperative Enforcement Agreement between the State of Alaska and the federal government (Attachment C). The Council may wish to review these documents in light of the discussions of previous agenda items and determine whether these agreements are still viable, should be revised, or replaced with new agreements.

JOINT MEMORANDUM OF UNDERSTANDING

UNDERSTANDING that the Alaska Board of Fisheries and the North Pacific Fishery Management Council play important--yet different--roles in fisheries management for Alaska, and

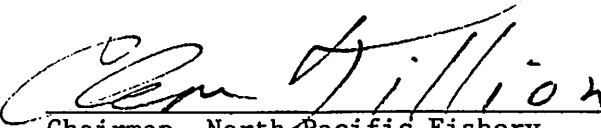
APPRECIATING that the fisheries resources of Alaska and the users of those resources would all be served by the development of complementary management regimes by the Board of Fisheries and the North Pacific Fishery Management Council,

THE ALASKA BOARD OF FISHERIES and the NORTH PACIFIC FISHERY MANAGEMENT COUNCIL HEREBY AGREES AS FOLLOWS:

- 1) to identify and list the key points of common concern where coordination between the two agencies is necessary,
- 2) to develop the most effective and appropriate means to accomplish that coordination, and
- 3) to meet again in joint session to consider those recommendations as frequently as is considered desirable and necessary by the Chairman of the Board of Fisheries and the Chairman of the North Pacific Fishery Management Council.



Chairman, Alaska Board of Fisheries



Chairman, North Pacific Fishery
Management Council

Date: Dec 20, 1979

Place: Anchorage, AK

JOINT STATEMENT OF PRINCIPLES
BETWEEN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC)
ANCHORAGE, ALASKA
and
ALASKA BOARD OF FISHERIES (BOF)
JUNEAU, ALASKA
ON
MANAGEMENT OF DOMESTIC KING CRAB FISHERIES
IN THE BERING SEA AND ALEUTIANS

Recognizing that NPFMC has a legal responsibility for reviewing and recommending to the Secretary of Commerce measures for the conservation and management of the fisheries of the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska, with particular emphasis on the consistency of those measures with the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act); and

Recognizing that State and Federal governmental agencies are limited in fiscal resources, and that the optimal use of these monies for North Pacific fisheries management, research, and enforcement occurs through a clear definition of agency roles and division of responsibilities, thus avoiding unnecessary duplication; and

Recognizing that the State of Alaska has for more than two decades exercised effective control over domestic king crab fisheries both within and without its territorial waters. The State system centers around BOF for policy and regulations. BOF's regulatory system provides for extensive public input; is sufficiently structured to insure annual revisions; is flexible enough to accommodate resource and resource utilization "emergencies;" and is understood and familiar to the users of North Pacific fisheries resources. Further, there exists a substantial investment by the State in facilities, communications and information systems, vessels and other equipment, coupled with a cadre of experienced personnel capable of carrying out extensive management, research, and enforcement programs to monitor the conduct of the fisheries and the status of the resources.

Therefore, NPFMC and BOF enter into this Joint Statement of Principles, defining the roles of both organizations, in order to achieve the most effective and efficient management of domestic king crab fisheries in the Bering Sea and Aleutians.

I. Applicable Fisheries

This Joint Statement of Principles applies only to the domestic fishery for king crab (all members of genera Paralithodes and Lithodes) in the Bering Sea, Bristol Bay, Adak, and Dutch Harbor areas, also known as State of Alaska king crab statistical areas Q, T, R, and O. This fishery is hereinafter referred to as "the fishery."

II. Duration of Agreement

Recognizing that NPFMC is currently preparing a Fishery Management Plan (FMP) for the fishery, this agreement shall remain in effect until that FMP is implemented by the Secretary of Commerce. At that time the agreement shall be reviewed by both NPFMC and the BOF and revised as necessary and as they may agree so that it will conform with the then existing situation.

III. NPFMC and BOF shall undertake the following activities:

1. NPFMC and BOF shall adopt the framework developed and approved by both organizations in April and May, 1981 to govern management of the fishery, prescribing objectives, standards, and measures found to be necessary for the fishery's effective management. These objectives, standards, and measures are consistent with the national standards of the Magnuson Act and with the laws of the State of Alaska; and do not discriminate between residents and non-residents of the State of Alaska.
2. The framework shall be implemented through regulations adopted by BOF in accordance with the laws of the State of Alaska, which shall be consistent with the objectives, standards, and measures prescribed in the framework. Before taking final action on any regulation governing the fishery, BOF shall make readily available in written form to all persons interested in the fishery for a period of at least thirty (30) days, the reports and data received by BOF upon which the proposed regulation is based; shall afford all such persons the opportunity to submit written and oral comments to BOF on the proposed regulation during that period; and shall, upon the request of NPFMC, meet with NPFMC or its representatives to discuss the proposed regulation. Before any BOF regulation governing the fishery goes into effect, BOF shall issue a written statement explaining the basis for the regulation. The preceding provisions of this paragraph shall not apply to emergency regulations.
3. NPFMC and BOF shall meet jointly at least once every calendar year to consider management of the fishery and discuss the need for amendment of the framework or any regulations governing the fishery. NPFMC and BOF or their designated representatives shall also meet jointly to consider management of the fishery at the request of either NPFMC or BOF. All persons and agencies interested in the fishery shall have the opportunity to submit written and oral comments and reports on management of the fishery to NPFMC and BOF at these meetings. In preparation for the mandatory annual joint meeting provided for in the first sentence of this paragraph, representatives of NPFMC and BOF shall hold a public hearing in the State of Washington at which all persons and agencies interested in the fishery shall be afforded the same opportunity to comment on management of the fishery that they would have at the meeting itself.
4. The Alaska Department of Fish and Game (ADF&G) shall have primary responsibility for developing the information upon which regulations governing the fishery are to be based, and for implementing these regulations through monitoring of the fishery and development of

in-season management measures. NPFMC and BOF shall encourage ADF&G, in carrying out this responsibility, to consult actively with the National Marine Fisheries Service and the fishery management agencies of other states, in order to prevent duplication of research and management effort and to make optimum use of the resources available for management of the fishery.

5. NPFMC and BOF shall resolve conflicts on the framework and implementing regulations through all appropriate means.

Approved:

For the North Pacific Fishery
Management Council

For the Alaska Board of Fisheries



Clement V. Tillion, Chairman



Nick Szabo, Chairman

10 - 20 - 81
Date

10/20/81
Date

COOPERATIVE ENFORCEMENT AGREEMENT
BETWEEN THE GOVERNMENT OF
THE UNITED STATES

and

THE STATE OF ALASKA

PURSUANT TO THE
FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976
(26 U.S.C. 1801, et. seq.)

Whereas, the Fishery Conservation and Management Act of 1976 (FCMA) (Public Law 94-265, 16 U.S.C. 1801, et. seq.) as amended, established a Fishery Conservation Zone (FCZ) contiguous to the territorial sea;

Whereas, responsibility for implementation of fishery management plans (FMP's) developed under the authority of the FCMA for fisheries in the FCZ resides with the Secretary of Commerce;

Whereas, under Section 311 (16 U.S.C. 1861) of the FCMA, the Secretaries of Commerce and Transportation ("Secretaries") jointly are charged with the responsibility for enforcing the provisions of the FCMA;

Whereas, it is the intent of Congress and the policy of the FCMA to make use of the affected states' resources, facilities, and expertise in the establishment and implementation of fishery management plans for the FCZ, and, to the extent possible, to manage individual and interrelated stocks of fish as a unit or in close coordination;

Whereas, the State possesses law enforcement personnel, vessels, aircraft, vehicles and other equipment and capabilities presently engaged in enforcing state conservation laws which could be utilized in assisting the Secretaries in carrying out the law enforcement responsibilities mandated by the Act;

Whereas, the North Pacific Fishery Management Council (NPFMC) has recognized that the flexibility in the State's management program, which allows for rapid in-season adjustments in allowable catch, seasons, and area closures in response to unanticipated adverse or favorable conditions of the fishery resources, is considered a substantial advancement in traditional fisheries management and has resolved, for conservation purposes, to incorporate in several of its management plans provisions which would allow in-season adjustments to be made by the Director, Alaska Region, of the National Marine Fisheries Service;

Recognizing that as FMP's developed by the NPFMC are implemented by Federal regulations, the United States Coast Guard and National Marine Fisheries Service will enforce the provisions of these regulations with respect to both foreign and domestic fishermen;

Recognizing that the State of Alaska has an extensive management, research, and enforcement program which has effectively managed the domestic commercial shellfish and finfish fisheries throughout their range prior to the enactment of the FCMA; that the Division of Commercial Fisheries of the Alaska Department of Fish and Game has in place a staff of fisheries managers and research biologists with substantial experience and expertise in fisheries management; and that the State of Alaska has made a substantial investment in facilities, communications and information systems, vessels and other equipment which makes it possible to closely monitor the conduct of the fisheries, and recommend in-season management adjustments as necessary, as well as facilitating both short- and long-term research projects;

Therefore, it is consistent with the purposes and policy of the FCMA to conclude an agreement between the State and the

United States that will provide for cooperation and full utilization of the resources of the State in accomplishing the purposes of the FCMA; and

The Governments of the United States and the State of Alaska do hereby enter into an agreement concerning implementation and enforcement of domestic fishery provisions of FMP's developed pursuant to the Fishery Conservation and Management Act of 1976.

I. IN-SEASON ADJUSTMENTS OF SEASONS AND AREAS

- a. Alaska Department of Fish and Game (ADF&G) and the National Marine Fisheries Service, Alaska Region, (NMFS) mutually agree:

1. To work in close coordination to implement fishery management plans (FMP's) and those provisions within the plans which call for the use of field orders (FO's) to adjust, for purposes of conservation and management, season and area openings and closures in the FCZ; and
2. To work in close coordination to implement emergency orders (EO's), which adjust season and area openings and closings affecting vessels and persons subject to State jurisdiction, where necessary to promote implementation of FMP's.

- b. The ADF&G agrees:

1. To monitor the status of the fishery resources in-season and recommend to the

Director, Alaska Region (hereafter referred as "Regional Director") of the NMFS appropriate adjustments in season and area openings and closures for purposes of conservation and management. In-season condition and status of the stocks, as well as rates of domestic harvest and total catch, will be derived from fish tickets, registration reports, dockside sampling, research data, and other empirical observations on a real time basis. ADF&G fisheries management personnel will, based on available information, evaluate the status of the stocks and the fishery using the following criteria (which generally parallel those which govern the actions of the Regional Director when issuing FO's).

- A. The effect of overall fishing effort within the registration area;
- B. Catch per unit effort and rate of harvest;

- C. The relative abundance of the fishery resource within the area in comparison with pre-season expectations;
- D. The proportion of immature or soft shell crab being handled;
- E. General information on the condition of the fishery resource within the area;
- F. Information pertaining to the optimum yield of the fishery resource within the registration area;
- G. The rate of harvest and total by-catch of non-target species;
- H. Fishing practice mortality of juveniles of either target or non-target species;
- I. Fishing practice mortality of non-target species;
- J. Enforcement capability; or

K. Any other factors necessary for the conservation and management of the fishery resources.

2. That once an ADF&G management biologist has determined that conditions exist within a fishery which will, for conservation and management purposes, require the issuance of a FO, the following administrative procedure shall be followed:

A. A draft FO shall be prepared under direction of the respective ADF&G regional office, following the procedure described in "Emergency Orders, Standards of General Application" (ADF&G, June 1976). This includes a detailed justification for the proposed action. The text of the FO shall be transmitted to the Commissioner by the most expedient means possible.

B. During the drafting stage of the proposed FO, the Regional Director shall be notified by telephone of the area,

time and reason for the proposed opening or closure.

C. The Commissioner, or his designee, shall

- 1) analyze the proposal and justification and
- 2) if he agrees with the proposed FO, forward the draft document to the Regional Director with his recommendations by the most expedient means possible.

3. That, in the event the Commissioner determines there is the necessity of issuing an EO for a fishery in the territorial waters, without the need to issue a complementary FO, he shall notify the Regional Director of the proposed action and the intended date for implementation if implementation of the EO could affect the fishery in the FCZ.

c. The NMFS agrees that:

1. Upon receipt of a recommended FO/EO from the Commissioner, the Regional Director will log receipt of the proposal;

2. If the Regional Director disapproves the draft FO, he will notify the Commissioner immediately, stating the reason for disapproval;
3. If the Regional Director intends to approve the action, he will so notify the Commissioner and the Assistant Administrator for Fisheries, NOAA, and will publish a proposed FO in the Federal Register for public comment before it is made final, unless the Regional Director finds for good cause that such notice and public comment can be waived as being impracticable, unnecessary, or contrary to the public interest.
4. If the Regional Director decides, for good cause, that a final FO is to be issued without affording a prior opportunity for public comment, public comments on the necessity for, and the extent of, the FO shall be received by the Regional Director for a period of 15 days after the effective date of the field order.

- A. During any such 15 day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.
 - B. If comments are received during the 15 day period the Regional Director shall reconsider the necessity for the FO and, as soon as practicable after that reconsideration, shall publish in the Federal Register either (a) a notice of continued effectiveness of the adjustment, responding to comments received; or (b) a modification or rescission of the adjustment after so notifying the ADF&G.
5. A final FO issued by the Regional Director, following either receipt of public comment or a determination to waive public comment, shall include the following information:
- A. A description of the area to be opened or closed;

- B. The effective date and any termination date of such opening or closure; and
 - C. The reason for the opening or closure.
6. A final FO does not become effective until:
- A. It is filed for publication in the Federal Register;
 - B. It has been posted and otherwise made available to the public, in accordance with procedures customarily used by the ADF&G for the posting and publicizing of similar notices of closure, for a period of time specified in regulations implementing the FMP; and
 - C. It has been broadcast at those time intervals, channels and frequencies customarily used by the ADF&G to broadcast similar notices of closure; for a period of time specified in regulations implementing the FMP.

7. A FO remains in effect until the earlier of the following dates:

A. Any expiration date stated in the FO; or

B. The effective date of any FO which modifies, rescinds or supercedes the initial FO.

8. In the event the Regional Director unilaterally initiates a FO, outside of the procedure outlined above, he shall notify the Commissioner immediately of the proposed action and the date for implementation.

9. Factors which the Regional Director may take into consideration in approving a recommended FO are set forth in the regulations implementing the fishery management plan for the fishery concerned.

d. Term: This section (I) of this Agreement shall be effective as of the date this Agreement is signed by NMFS and the ADF&G, and shall remain in effect

until terminated by either Party, giving the other Party written notice, in which event it shall terminate on the day immediately following the thirtieth day of such notice.

- e. Amendment: This section (I) of this Agreement may be amended with the mutual consent of the NMFS and the ADF&G. The Regional Director shall notify the other parties to this Agreement of any amendments effected pursuant to this section.

II. PERMIT ISSUANCE (Reserved)

This section (II) of this Agreement is reserved. It will be added by amendment of the Agreement with the mutual consent of the NMFS, ADF&G, United States Coast Guard (USCG), and the Alaska Commercial Fisheries Entry Commission (CFEC).

III. REPORTING, DATA COLLECTION AND STORAGE

- a. The NMFS and ADF&G mutually agree:

1. To cooperate in reporting fish harvests in waters off Alaska and in the collection and storage of pertinent data for the purposes of effective administration of regulations implementing fishery management plans;
2. That, for the purposes of collection and storage of data required by Federal regulations, ADF&G agents shall be considered as agents of the Federal Government and subject to the confidentiality provisions of 16 U.S.C. 1853(d) and 18 U.S.C. 1905; and
3. That the collection, storage and release of such domestic catch data by the ADF&G will conform to federal confidentiality requirements of the Act and other applicable law.

b. The ADF&G agrees to:

1. Require processors and fish buyers to submit fish ticket data to ADF&G at least once a week or as otherwise specified by ADF&G for each particular area and fishery;

2. Develop the capability of collecting and storing all data generated by fish ticket reporting requirements listed in FMP's;
3. Develop the capabilities of providing a hard copy report of domestic fish catches for each species by INPFC management area;
4. Submit to the Regional Director the report described in number three (3) above, monthly;
5. Establish and maintain procedures for preserving the confidentiality of data collected under this Agreement; and
6. Provide the Regional Director with a description of the procedures specified in the above paragraph so that their effectiveness may be determined and evaluated and to make any reasonable changes in such procedures as may be requested by the Regional Director.

c. The NMFS agrees to:

1. Provide to the Commissioner, ADF&G, weekly aggregate catch reports of foreign fisheries that are covered by FMP's and PMP's;
2. Provide to the Commissioner, ADF&G, a current identification of data to be collected by the State under the authority of this Agreement and regulations implementing FMP's;
3. Provide to the Commissioner, ADF&G, a list of authorized individuals to whom the State may disclose Federal data collected and stored under this Agreement; and
4. Be responsible for obtaining all Federal Reports Act clearances for the collection of any data collected under authority of the FCMA.

d. Term: This section (III) of this Agreement shall be effective as of the date the Agreement is signed by the NMFS and the ADF&G, and shall remain in effect until terminated by either Party, giving

the other Party written notice, in which event it shall terminate on the day immediately following the thirtieth day of such notice.

- e. Amendment: This section (III) of this Agreement may be amended with the mutual consent of the NMFS and the ADF&G. The Regional Director shall notify the other parties to this Agreement of any amendments effected pursuant to this section.

IV. LAW ENFORCEMENT

- a. The ADF&G, Alaska Department of Public Safety (ADPS), NMFS, and USCG mutually agree to work in close coordination and cooperation to enforce Federal and State regulations implementing fishery management plans. Nothing in this agreement shall be interpreted to affect the authority of each agency to make the final determination within its priorities regarding utilization of its personnel, services, and equipment.
- b. The ADF&G and ADPS agree that:

1. Those law enforcement officers (hereafter referred to as Officers) who are members of ADPS and ADF&G, and who have been designated under 16 U.S.C. 1861(b), may enforce those provisions of the FCMA and 50 C.F.R. 670 - 679 that apply to fishing vessels of the United States (as defined in the Act), in accordance with any guidelines or limitations as the Secretaries or their designees may, from time to time, impose.

2. All Officers, while acting as Federal law enforcement agents, with respect to fishing vessels of the United States may:
 - A. With or without a warrant or other process:
 - (i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307(1)(D), (E), (F), and (H) of the FCMA;

(ii) board, and search or inspect, any U.S. vessel which is subject to the provisions of the FCMA;

(iii) seize any U.S. vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of the FCMA or regulations;

(iv) seize any fish (wherever found) taken or retained in violation of any provision of the FCMA or regulations; and

(v) seize any other evidence related to any violation of any provision of the FCMA or regulations;

B. Execute any warrant or other process, issued by any court of competent jurisdiction; and

C. Exercise any other lawful authority;

3. All Officers, while acting as Federal law enforcement agents, shall possess the powers and authorities as set forth above but shall not be held or considered as employees of the United States for the purposes of any laws administered by the United States Civil Service Commission and shall not be salaried by the United States for any services performed;
4. The State shall provide to the NOAA Office of General Counsel, Juneau, information with respect to any investigative reports pursuant to section 311 of the FCMA (16 U.S.C. 1861(b));
5. Officers who for any reason leave or are removed from service as members of the ADPS or ADF&G will be simultaneously divested of authority herein conferred.

c. The NMFS agrees that:

1. Its Special Agents who are deputized as State of Alaska Peace Officers are hereby authorized to enforce State of Alaska fishing laws and regulations which implement or complement NPFMC management plans;
2. Its Special Agents, while acting as State Peace Officers, shall possess the powers and authorities of State Peace Officers but shall not be held or considered as employees of the State of Alaska for the purposes of personnel laws administered by the State and shall not be salaried by the State for any services performed;
3. Its agents shall provide to the State of Alaska, Department of Law, information with respect to any investigative reports that may be initiated pursuant to State law;
4. Its Special Agents who for any reason leave or are removed from service of the NMFS will be simultaneously divested of authority herein contained.

d. The USCG agrees that:

1. ADPS and ADF&G Officers will be permitted to accompany any USCG vessel or aircraft on law enforcement patrols providing that space is available;
2. On request from ADPS and/or ADF&G for assistance in any State of Alaska fishery law enforcement situation, the USCG will provide transportation and backup assistance, if USCG resources are available;
3. It shall, in a timely manner, provide to the NMFS and the ADPS and/or ADF&G data and information with respect to activities under this Agreement and any enforcement actions that have been taken.

e. Term: This section (IV) of this Agreement shall be effective as of the date the Agreement is signed by the NMFS, USCG, ADPS and ADF&G, and shall remain in effect until terminated by any Party, giving the other Parties written notice, in which event it shall terminate on the day

immediately following the thirtieth day of such notice.

- f. Amendment: This section (IV) of this Agreement may be amended with the mutual consent of the NMFS, ADF&G, USCG and ADPS. The Regional Director shall notify the other parties to this Agreement of any amendments made pursuant to this section.

V. AUTHORITY

- a. State: AS 16.05.251, AS 16.05.270, AS 16.05.060, AS 16.05.150 et. seq., AS 18.65, AS 44.62, AS 16.05.050, AS 16.05.020.
- b. Federal: 16 U.S.C. §§1801, 1851(a)(7), 1855(g), and 1861(a).

VI OTHER PROVISIONS

- a. This Agreement shall be construed to be consistent with the FCMA, including the definitions of terms in the Act, and regulations promulgated pursuant thereto.

- b. Nothing herein is intended to conflict with current Federal or State of Alaska statutory authorities or directives. If the terms of this Agreement are inconsistent with existing directives of any of the agencies entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid as to that party; but the remaining terms and conditions of this Agreement not affected by any inconsistency shall remain in full force and effect.
- c. At the first opportunity for review of the Agreement, such changes as are deemed necessary will be accomplished by either an amendment to this Agreement or by entering into a new agreement, whichever is deemed expedient to the interests of the concerned parties.
- d. Nothing in this Agreement shall be construed as a waiver or admission regarding any claim of the respective parties regarding their authority or jurisdiction under the FCMA or any other applicable law.

