

ALASKA BOARD OF FISHERIES
March 22-26, 2011 King and Tanner Crab meeting
Anchorage, Alaska

List of Selected Findings

2008-260-FB	Continuation of the Crab Observer Oversight Task Force
2006-246-FB	Finding in Support in the Finding of Emergency in the Aleutian District Pacific Cod Fishery.
2005-239-FB	Crab Oversight Committee Appointments
2003-223A-FB	BS/AI Crab Rationalization Task Force
2000-200-FB	Procedures for Board of Fisheries Meeting Committees
2000-199-FB	Alaska Board of Fisheries Committee Policy Statement
99-190-FB	Area O Brown King Crab Season
99-189-FB	CDQ Crab
99-188-FB	Bering Sea Tanner Crab Management Plan
99-187-FB	Bristol Bay Red King Crab Fishery
99-186-FB	BS/AI Crab Observer Oversight Task Force
99-184-FB	Policy on Development of Findings
91-129-FB	Allocation Criteria [Previously 91-03-FB]
91-128-FB	Alaska Board of Fisheries Standing Rule [Previously 91-02-FB]
80-78-FB	Operating Procedures: Motions to Reconsider

ALASKA BOARD OF FISHERIES
Continuation of the Crab Observer Oversight Task Force

2008-260-FB

Pursuant to the Board's discussion and the requests of the stakeholders and their representatives, the board has determined that the continuation of the Crab Observer Oversight Tack Force for the crab observer program and the program receipts system is useful.

At its March 2008 Statewide King and Tanner Crab meeting, the Board received nominations of intent to be kept as membership of this task force. The board notes that with the Bering Sea Aleutian Islands crab rationalization it is timely to review the membership of this task force. The board makes the following appointments:

Lance Farr – R/V Kevleen K
Doug Wells – C/P Baranof
Arni Thomson – Alaska Crab Coalition
Jerry Bongen – FV Pacific Venture
Ann Vanderhouvern – Bristol Bay Economic Dev. Corp.
Jeff Stephan
Dick Powell
Linda Kozak

The term of this Oversight Task Force is three years. The board will review the membership and the charge through the Board's next Statewide King and Tanner Crab meeting.

The charge to the Oversight Task Force is outlined in Board Finding 99-186-FB.



Mel Morris, Chair
Alaska Board of Fisheries

Vote: 7 in favor, 0 opposed

ALASKA BOARD OF FISHERIES
FINDING OF SUPPORT IN THE FINDING OF EMERGENCY FOR
ALEUTIAN ISLANDS DISTRICT West of 170° PACIFIC COD FISHERY
2006-246-FB
February 26, 2006

The Alaska Board of Fisheries finds that an emergency exists and emergency regulations providing for an Aleutian Islands District Pacific Cod Management Plan are necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

Economic opportunities for residents of Adak and other areas in the Aleutians are limited, and the tax base is highly dependent on fisheries. The small remote community of Adak, redeveloping after closure of a naval base, has lost access to fishery resources in recent years due to factors beyond its control such as crab rationalization which reduced it from packing 80 percent of the Western Brown Crab to 30 percent, stellar sea lion closures which prevent harvest of a federal Pollock allocation, and early harvests of the Pacific Cod total allowable catch, which is shared by the Bering Sea and Aleutian Islands Areas, before Pacific Cod are generally available for harvest in the Aleutians resulting in a fall in the Aleutian Islands harvest percentage from a high of 20.8 percent in 2000 to 10.2 percent in 2005. The federal "A" season for Pacific cod has been becoming steadily more compressed in recent years, with the quota reached on March 24 in 2004 and March 13 in 2005, and with closure as early as the first week of March possible in 2006. The majority of the vessels in the small boat fleet do not hold federal LLP's and are limited to participation in fisheries within State waters. Compression of the Pacific cod season, makes it uneconomic for small vessels to gear up and participate in the fishery and is further reducing the already limited opportunities available in the Adak area in both its exiting trawl fleet and its developing fixed gear fleet and this compression is contributing to an economic crisis which endangers the redevelopment of Adak.

In December 2005, the Board originally noticed an intent to adopt proposal 399, a Pacific Cod Management Plan for the Aleutians, at its January meeting, allowing sufficient time for regular regulations to become effective, however, the North Pacific Fisheries Management Council and the National Marine Fisheries Service requested a joint meeting with the Board prior to Board action, expressing concerns about the proposal, including concerns about impacts on resource conservation and sustained yield management, impacts on Stellar sea lions, the possibility of triggering formal consultation under section seven of the Endangered Species Act, impacts on other fisheries, the ability to rollover unharvested Pacific Cod, bycatch concerns, catch accounting concerns, enforcement concerns, and impacts on the related Federal Amendment 85 process. Pursuant to its groundfish guiding principles under 5 AAC 28.089 and its Joint Protocol agreement with the North Pacific Fisheries Management Council, the Board agreed to this request, and thereby resolved a number of urgent issues including insuring that the fishery would not create problems under the Endangered Species Act or violate sustained yield management principles. The decision to consult with the North Pacific Management Council and the National Marine Fisheries Service and to address the issues raised by these agencies made it impossible to adopt regular regulations that would be effective in time to allow a season for the Aleutians to open in March of 2006 impossible, regular regulations could not be effective until April of 2006, by which time the federal parallel fishery would be closed and the total allowable catch for the federal A season would be taken and unavailable to a State waters fishery. Failure to have the regulations in effect for the 2006 season would endanger

development of the fishery in the latter part of 2006 and in 2007, and would be highly detrimental to the welfare of the Adak community and small boat fishermen in the Aleutian Islands area.

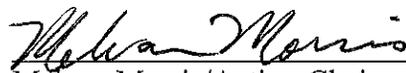
In the absence of emergency regulations, due to the timing of Pacific Cod Fishery, severe winter weather conditions in the Aleutians, and a dangerous pass between Adak and the state waters fishing grounds, the small boat fleet would be very limited in its ability to safely participate in the early season and could participate fully and economically only by ignoring weather constraints which often preclude the safe operation of small boats in the Aleutians. Failure to have the regulations in effect for the 2006 season would thus be likely to result in significant public safety issues.

Based on the foregoing facts, emergency regulations with an immediate effective date, providing for a state waters Aleutian Islands Pacific cod management plan, stretching out the season and providing a reasonable opportunity for Pacific cod to be harvested in commercially viable quantities in the Aleutian Islands are needed in order to preserve both the public safety and welfare. The board delegates authority to the Commissioner or the commissioner's designee to prepare and file a formal finding of emergency along with the emergency regulations that reflect the board's actions taken during the February 20 - 26, 2006 meeting.

ADOPTED: FEB. 26, 2006

VOTE: 4/1/1/1

ABSTAIN: NELSON



Melvan Morris/Acting Chair

ALASKA BOARD OF FISHERIES
Continuation of the Crab Observer Oversight Task Force

2005-239-FB

Pursuant to the board's discussions and the requests of the stakeholders and their representatives, the board has determined that the continuation of the Crab Observer Oversight Task Force for the crab observer program and the program receipts system is useful.

At its March 2005 Statewide King and Tanner Crab meeting, the board received nominations and letters of intent to be kept as membership of this task force. The board notes that with BS/AI crab rationalization it is timely to review the membership of this task force. The board makes the following appointments:

Garry Loncon, Royal Aleutian Seafoods
Jeff Stephan, UFMA
Ron Briggs, FV Trailblazer
Linda Kozak, Fisheries Consultant
Doug Wells, C/P Baranof
Arni Thomson, ACC
Tom Casey, Fisheries Consultant
Edward Paulsen, FV Arctic Sea
Bing Henkel, FV Erla N
Lu Dochterman, FV North Point
Jerry Bongen, FV Pacific Venture
Charlie Rehder, FV Kustutan
Richard Powell
Ann Vanderhouvern, Saltwater, Inc.
Tom Suryan, FV Bristol Mariner

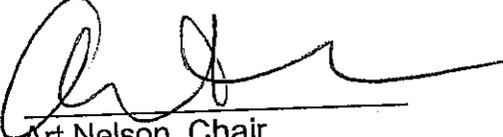
The term of this Oversight Committee is three years. The board will review the membership and the charge through the board's next statewide king and tanner crab meeting.

The charge to the Oversight Committee is outlined in board finding 99-186-FB.

ADOPTED: March 12, 2005

UPDATED: 5/25/05

Vote: 6-0-1
(Jensen absent)



Art Nelson, Chair
Alaska Board of Fisheries

Alaska Board of Fisheries
Task Force to Implement Bering Sea/Aleutian Island
King and Tanner Crab Rationalization
2003 - 223A FB

Background:

For the past several years, the North Pacific Fishery Management Council had been working towards a plan to "rationalize" many of the Bering Sea and Aleutian Islands crab fisheries. In June of 2002, the council selected their preferred alternative that would, among other things, assign quotas, or shares, for both the harvesting and processing sectors.

While the council is still working on trailing amendments to the plan, it cannot be implemented until the U.S. Congress lifts the moratorium on new IFQ-type fisheries, or specifically passes legislation to allow this rationalization plan to go forward.

Under the council's fishery management plan for BS/AI crab, much of the fishery management is delegated to the State of Alaska. If the council finalizes its actions and Congress provides authorization, the Alaska Board of Fisheries will need to adopt new regulations to allow the fishery to be prosecuted as outlined by the council.

Charge:

At its March 2003 meeting in Anchorage, the Board of Fisheries will select stakeholders to examine possible actions the board will need to take concerning state regulatory structure for the Bering Sea/Aleutian Islands king and Tanner crab fisheries once the council finalizes its actions, and make recommendations on new regulations. It is anticipated that this task force will work very closely with staff from the Alaska Department of Fish and Game, the North Pacific Fishery Management Council, the National Marine Fisheries Service, and the Alaska Department of Law.

The task force is to work within the intent and scope of the council's plan, and any additional Congressional direction, to provide the Board of Fisheries with proposals to assist the implementation of the final rationalization plan.

The task force will begin its work when the rationalization plan is finalized and Congressional authorization is provided. At that time, the board will provide an timeline for the task force to complete its work.

The task force is composed of the following stakeholders:

Steve Minor	Arni Thompson	John Garner
Brent Paine	Jeff Steele	Leonard Herzog
Frank Kelty	Linda Kozak	

The Pacific Northwest Crab Industry Advisory Committee is an ad hoc member of the task force. Task force members are responsible for their own expenses to attend meetings.

The task force will maintain contact with the Board of Fisheries by reports to board member Art Nelson. An update will be provided to the board by member Art Nelson at the October 2003 work session.

Adopted: March 25, 2003
Anchorage, Alaska



Ed Dersham, Chair

Vote: 7 - 0

PROCEDURES FOR BOARD OF FISHERIES MEETING COMMITTEES

#2000-200-FB

INTRODUCTION

The description of the processes in this Memorandum are applicable to Board committees that meet during a regulatory Board meeting. They are not applicable to the Board's standing committees and task forces that conduct business throughout the year on number matters. Examples of standing committees are the Joint Protocol Committee that works with the North Pacific Fishery Management Council and the Legislative Committee that is responsible for all matters before the Alaska State Legislature.

The meeting committees consist of Board members only. Members of the public who participate in the committee process are advisers to the committee, but are not committee members themselves. Advisory committee representatives are ex-officio members of any advisory panel to any committee with which they wish to serve.

DESCRIPTION OF THE COMMITTEE PROCESS

The committee formation process for each regulatory year will commence shortly after proposals for that regulatory year are received and compiled. Appropriate department staff, working with Board members assigned by the Chair, will group and preliminarily assign proposals, grouped by appropriate topic, to committees for each scheduled regulatory meeting during the year. Proposal roadmaps will likewise be developed that mesh with committee proposal groupings. Preliminary staff assignments for committees will also be considered during the initial proposal review.

At its work session each fall, the Board will evaluate and provide further refinement to the draft roadmaps and preliminary committee organization and assignments. Board member responsibilities for and assignments to committees will be determined at the fall work session. The goal is to have all committee structures, including Board member and staff assignments, completed before the respective regulatory meeting occurs. Committee roadmaps with Board member assignments will be distributed to the public after the fall work session. The roadmaps and the committee assignments are subject to change in the face of unforeseen circumstances or changed conditions.

COMMITTEE PROCEDURES DURING REGULATORY MEETINGS

The practices and procedures to which committees will attempt to adhere during Board regulatory meetings are as follows:

1. Early during each regulatory meeting the Board Chair will provide a brief description of how the committee system works and will further direct the public's attention to the location of a posted committee roadmap and committee assignments. The Chair will also announce that a copy of the Board's Policy Statement and this procedural description on the role of committees is available from the Board's Executive Director upon request.
2. Board committees consist solely of Board members appointed by the Board Chair. Advisory committee representatives and public panel participants are not committee members, but rather are advisors to the committee. Department staff as well as other state and federal agencies staff will provide technical assistance to committees.
 - A) Public panel participants are generally stakeholders in the fisheries under consideration. They may be CFEC permit holders, crewmen, processors, executive directors of associations, and private citizens.
 - B) A Board member will serve as a chairperson for each committee.
 - C) The Board Chair will announce the location and time of all committee meetings.
 - D) All committee meetings are open to anyone that desires to attend, although participation is limited to the advisory committee representatives, the public panel participants, the technical advisors, the department staff and the committee members.
3. Individuals that desire to serve as public panel participants to any committee should make their availability known to the chair of the respective committee. Willingness to serve can be expressed by personal contact with a committee chair or during presentation of formal oral testimony. Committee chairs are to keep a list of prospective public panel participants

during the course of the meeting.

A) Attendance at the Board meeting during the presentation of staff reports and presentation of oral testimony is generally a prerequisite to serving as a public panel participant to a committee at most meetings. This requirement will be most prevalent at meetings having high levels of attendance.

B) Advisory Committee representatives are ex-officio members of all public panels to all committees and may move between committees as they choose.

4. At the conclusion of public testimony, the chair of the respective committees will develop a preliminary list of public panel participants. The goal of the selection process will be to insure, as far as practicable, that there is appropriate and balanced representation of fishery interests on all committees. Tentative assignments will be reviewed by the Board as a whole and then posted for public review. After public review the Board Chair, in session on the record, will ask the public for concurrence or objections to the panel membership. Reasonable adjustments to membership on public panels will be accommodated.

5. Parliamentary procedures for committee work will follow the "New England Town Meeting" style. Public panel participants, upon being recognized by the committee chair, may provide comments, ask questions of other public panel members, ADF&G staff or the committee members or may otherwise discuss the issues assigned to a committee. Committee chairs will attempt to manage meetings in a manner that encourages exchange of ideas, solutions to complex issues and resolution of misunderstandings. Participants are required to engage in reasonable and courteous dialogue between themselves, Board committee members and with ADF&G staff. Committee meetings are intended to provide opportunities for additional information gathering and sometimes for dispute resolution. Committees are not a forum for emotional debate nor a platform for repeating information already received through public testimony and the written record. Department staff will be assigned to each committee to keep notes of discussions and consensuses reached, if any.

A) Formal votes will not normally be taken by the committees, but proposals or management plans that

receive public panel consensus, either negative or positive, will be noted in the committee report.

B) The committee process, in the absence of consensus will attempt to bring greater clarity to individual proposals and to complex conservation or allocation concerns.

6. Advisory Committee representatives serving on public panels are not constrained to merely presenting the official positions of their Advisory Committee (as is required while providing public testimony). When participating in the committee process, Advisory Committee representatives may express both the official positions of their committee as well as their personal views on issues not acted upon or discussed by their Advisory Committee. They must, however, identify which of the two positions they are stating. The Board recognizes Advisory Committee representatives as knowledgeable fisheries leaders who have a sense of their community's position on issues that come before the Board. Therefore, the Board believes that Advisory Committee representatives must be able to function freely during committee meetings.

7. After a committee has completed its work with its public panel, the committee chair will prepare a report with assistance from other members of the committee and department staff. The format of this report, which becomes part of the public record, is attached to this policy. The primary purpose of a committee report is to inform the full Board of the committee work in synopsis form. The report will additionally serve as a compilation index to Advisory Committee, public and staff written materials (record copies, public comments and staff reports) relative to the proposals assigned to the respective committees. Committee reports will be clear, concise, and in all cases, will attempt to emphasize "new information" that became available during the committee process, i.e., information that had not previously been presented to the full Board in oral or written form.

A) In order to provide focus, committee reports should include recommendations relative to most proposals.

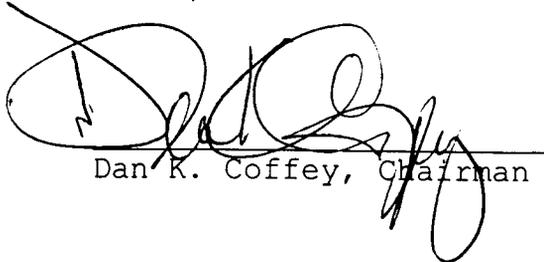
B) If a committee has developed a proposal to replace or modify an existing proposal, the substitute proposal should be prepared and attached the to

committee report.

- C) Committee reports will not include recommendations for proposals when such recommendations will predetermine the ultimate fate of the proposal. For example, when the full Board consists of six or few voting members (because of absence, abstention or conflict of interest) a committee of three should not provide a negative recommendation on a proposal.
8. Committee reports will be made available to the public in attendance at the meeting prior to the Board beginning deliberations on proposals. The Board Chair will publicly announce when reports are expected to be available for review by members of the public. The public will be encouraged to provide written comments to the Board (submittal of record copies) regarding the content of the committee reports and/or to personally contact Board members to discuss the reports.
- A) The Board Chair will provide sufficient time between release of committee reports and deliberations for the preparation of written comments or for verbal communications with individual Board members to occur.
9. Board deliberations will begin after the full Board has had time to review committee reports, after the public in attendance has had an opportunity to respond to the reports, and after the full Board has had an opportunity to review the public's comments made in response to the committee reports. During the course of deliberations, committee chairs will present their committee's report and initially will lead the discussion relative to proposals assigned to their committee.
10. The full Board shall be involved in the debate or discussion of all proposals and will make regulatory decisions based on all information received to the record, including information from committees.

Adopted by the Board in Anchorage on March 23, 2000.

Vote: 6-0-1
(Miller absent)


Dan K. Coffey, Chairman

ALASKA BOARD OF FISHERIES
POLICY STATEMENT

Policy for Formation and Role of Committees at Board Meetings

#2000-199-FB

INTRODUCTION

During the past three (3) years, in response to its workload and in a desire to increase public participation, the Board has employed a committee process during the course of its meetings throughout the state of Alaska. This committee process has changed and developed over these three years in response public and department comments and the experiences of the Board in using the committee process.

It is expected that this process will continue to evolve as the needs of the public, the Board and the Department continue to evolve. As such, the committee process is meant to be dynamic and flexible. However, despite the expected future refinements, now that the committee process has been through a three-year Board cycle, it is appropriate for the Board to consider formal adoption of a Policy Statement on the Board committee process.

The Board recognizes that the public relies on the predictability of the regulatory process. The purpose of adopting this Policy Statement and the attached description of the committee process is to place the committee process in the records of the Board. Thus, the adoption of this Policy Statement will define the purpose, the formation and the role of Board committees. Over time, all participants in the Board process can be knowledgeable and effective participants before the Board of Fisheries.

DISCUSSION

A major strength of the Board committee process lies in its broad-based public participation format. To accommodate greater levels of public involvement, to enable the Board to receive and utilize the volume of information presented to it and to effectively handle the increased number of proposals seeking regulatory changes, the Board has found it desirable to create internal Board committees. The Board has found that these committees allow the Board to complete its work timely and effectively, with full consideration of the content and purpose of the many proposals before it each year.

The Board considers the use of committees as an expansion of its traditional processes; not as a replacement for such long-standing information gathering activities as staff and advisory committee reports, public testimony, written comments or informal contacts between Board members and the public. The Board committees are intended to enhance the process, not become a substitute for existing process.

While the committee process, of necessity, involves less than the full Board, nothing about the committee process is intended to, or has the consequence of, replacing the judgment of the full Board on all proposals before it at any regulatory meeting. The Board has taken steps to insure that its committees do not dictate/direct the outcome of any vote on any proposal. These steps include limiting participation by Board members to less than the number of Board members necessary to determine the outcome of the vote on any proposal. In addition, Board committees avoid predetermining the outcome by organizing the written materials presented to the Board so that they are readily available for review by the full Board, by presenting detailed reports on the committee's work and by fostering and encouraging debate during the deliberative process.

The goals and purposes of the Board committee process include but are not limited to the following:

1. Acquisition of additional detailed information from both the public and staff.
2. Providing a consensus-building forum that assists in the understanding and resolution of complex and controversial conservation, allocation, fishery resource, habitat and management issues.
3. Enhancing the interaction among the Board, the public and department staff which results in broader public understanding of the regulatory decisions of the Board and the Department's management of the fisheries.
4. Promoting efficient use of time by organizing and grouping similar proposals, reducing redundancy and organizing the huge volume of written materials provided before and during meetings by the department and the public.
5. Insuring completion of the Board's work within fiscal and temporal constraints.

The Board now finds as follows:

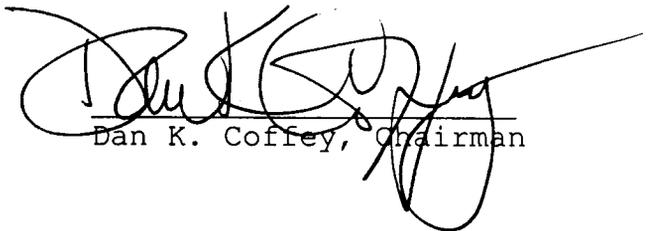
1. The goals and objectives are appropriate;
2. The statements of fact accurately reflect the beliefs and opinions of the Board as to the matters stated;
3. The committee process has, over a full three-year cycle of the Board, resulted in the goals and objectives having consistently been met.

Based on the findings, the Board of Fisheries resolves as follows:

1. The Policy Statement is hereby adopted as the policy of the Board of Fisheries.
2. The description of the committee process attached to this Policy Statement will be followed, in most circumstances, by the Board during the course of its regulatory meetings, subject always to the exceptional circumstance as determined by the Board.
3. The committee process is intended to be dynamic and flexible to meet the needs of the public, the Board and the Department. Thus, this Policy Statement and the attached description of the committee process are subject to ongoing review and amendment by the Board.

DATED at Anchorage, Alaska this 23rd day of March, 2000.

Vote
(Miller Absent)



Dan K. Coffey, Chairman

ALASKA BOARD OF FISHERIES
FINDING FOR AREA O BROWN KING CRAB SEASON
99-190-FB

Introduction

At a meeting on July 29, 1999, the Board of Fisheries (Board) amended 5 AAC 34.610(b) by moving up the date of the opening of the commercial Area O brown king crab season from September 1 to August 15 beginning in the 2000 season. Earlier at the March 1999 meeting the Board had moved the Bristol Bay red king crab season from November 1 to October 15. After the meeting, Area O brown king crabbers petitioned the Board under 5 AAC 39.998 to consider a corresponding change for the Area O brown king crab season to avoid an overlap in the seasons that would prevent participation in both fisheries.

Written and oral staff reports on the brown or golden king crab fishery, stock status, and the effect of a season change were presented by Alaska Department of Fish and Game (ADF&G) biologist Forrest Bowers. Because of past Board action in 1996 dealing with season opening dates for the eastern and western Aleutians, the Board focused their discussion on the last three brown king crab seasons.

FMP Criteria

As required by the Fishery Management Plan for Bering Seas/Aleutian Islands King and Tanner Crabs (FMP) criteria for Category 2 – Seasons measures, the Board discussed deadloss, product quality, biological seasons, weather concerns, costs to industry, and coordination with other fisheries.

Deadloss: The Board expressed some concern over deadloss, but acknowledged that there are multiple factors that impact deadloss, and didn't expect a 16-day season change to make a significant difference for the Area O fishery.

Product Quality: Since the western Aleutians area is typically open year-round, and no quality issues have been identified in that fishery, the board was satisfied that similar quality standard could be maintained throughout the eastern Aleutians in mid-August.

Biological Seasons: Golden king crab mating and molting occurs year-round. Therefore, there is no infringement on a defined mating and molting season. Staff could see no biological impacts from moving the fishing season.

Weather Concerns: Severe Weather can be expected year-round in the Aleutians, but the frequency of bad weather was expected to be greater in the fall than in the summer.

Costs to Industry: Over the long term, this season change was seen as potentially less costly than a season where vessels had to redeploy gear after the end of the Bristol Bay red king crab season.

Coordination with Other Fisheries: Board members also pointed out that moving the season up would maintain status quo of timing relative to the Bristol Bay red king crab season. The North Pacific Fishery Management Council staff saw no effects on groundfish fisheries and noted that pollock fishing began September 1.

Magnuson-Stevens Act National Standards

The Board reviewed and discussed the National Standards set out in the Magnuson-Stevens Act in the context of moving the brown king crab season to August 15, as follows:

National Standard 1, Preventing Overfishing while Achieving Optimum Yield: The season change would have a positive effect by keeping the existing relationship between the brown king crab and red king crab seasons.

National Standard 2, Best Scientific Information: The Board believed it had the best information available to make a decision.

National Standard 3, Individual Fish Stocks Managed as a Unit, Interrelated Stocks Managed in close coordination: The season change would be consistent with this standard.

National Standard 4, Allocations Fair and Equitable to All Fishermen: There was no indication or information that the season change would have any adverse effects, but, in fact, it would avoid allocative impacts.

National Standard 5, Efficiency in Utilization: Coordination of the fishing would have a positive effect on the efficiency in utilization of the resource.

National Standard 6, Taking into account and Allowing for Variations and Contingencies: Maintaining relationship between the brown and red king crab seasons would have a positive effect.

National Standard 7, Minimization of Costs and Avoiding Unnecessary Duplication: As explained above, a season change would have a positive effect.

National Standard 8, Impact on Fishing Communities: Coordination of the two fisheries would have only positive effects.

National Standard 9, Minimization of Bycatch: No indication of an adverse effect on bycatch.

National Standard 10, Promote Safety of Life at Sea: Earlier season, with slightly better weather, would have a positive effect.

The NPFMC concurred with the Board's application and assessment of the National Standards.

State Law Criteria

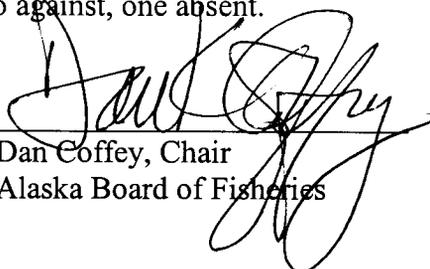
The Board referred to the allocation criteria found in AS 16.05.251(e), but, with Department of Law's confirmation, determined that no allocation was effected by the season change.

Effective Date

The Department of Law indicated that an emergency regulation would be needed to implement the season change for the 1999 season. The Board adopted an amendment to have the season change take effect beginning in 2000; and to keep the status quo for the 1999 season because no emergency was apparent. The Board also expressed concern that some participants had already scheduled vessel maintenance based on the existing season regulation and would be unable to participate in an earlier season this year.

The Board voted for the season change, six in favor, zero against, one absent.

ADOPTED: Oct 29, 1999
Fairbanks, Alaska


Dan Coffey, Chair
Alaska Board of Fisheries

VOTE: _____

**ALASKA BOARD OF FISHERIES
CDQ CRAB FINDINGS
99 - 189 - BOF**

The Board of Fisheries (board) met in Anchorage, Alaska from March 18 to March 28, 1999. During this meeting, the board discussed an agenda change request (ACR 27) filed by Alaska Crab Coalition. ACR 27 proposed restricting Community Development Quota (CDQ) groups from fishing a portion of their CDQ crab prior to the main crab fisheries, which was allowed under the existing CDQ crab management plan (5 AAC 39.690)

Background

The board approved a crab CDQ management plan in March 1997 using a commissioner's permit. During a presentation by state staff at the March 1997 board meeting, the board was informed of the possibility that the department might allow preseason CDQ crab fishing if ADF&G (department) staff could be convinced there would not be any major management problems conducting a preseason fishery. The department made it clear during staff testimony that there would not be any preseason CDQ crab fishing during the first year of CDQ fishing (RC 193). This hiatus would allow the department to understand the differences of the CDQ fishing from open access fishing. After the 1998 opilio CDQ fisheries were completed without significant problems, the department staff were willing to allow preseason CDQ fishing for the 1999 opilio season, if all conditions of the commissioner's permit were met.

For comparison, National Marine Fisheries Service (NMFS) allows CDQ groups to conduct preseason CDQ fishing for several groundfish species.

NPFMC

The North Pacific Fishery Management Council (council) discussed preseason CDQ crab fishing during its October 1998 meeting. The council deferred the issue to the State of Alaska to be addressed by the Board of Fisheries in the March 1999 meeting.

CDQ Agenda Change Request 27

The board passed the existing regulation 5 AAC 39.690(e)(7) in March of 1997. During the adoption of the board proposal that led to this regulation, the board thoroughly evaluated the proposal against the FMP, the national standards and other applicable law. Because it was not challenged, this regulation has withstood Secretarial review and the FMP appeals process. Before the regulation was actually implemented, the board agreed, at its October 1998 work session, to reconsider this regulation in respect to industry concerns and approved ACR 27.

The Pacific Northwest Crab Industry Advisory Committee (PNCIAC) endorsed ACR 27 during its January 6, 1999 meeting in Seattle. The vote was 7 for, 2 abstain (RC 37). Their concerns were that opening CDQ fisheries prior to the open access fisheries will have negative market impacts and fair start implications.

March 1999 Board Meeting

The board met in Anchorage from March 19 - 28, 1999. During that time, the board considered the issue of preseason CDQ crab fisheries.

The department presented reports and material pertinent to ACR 27, along with verbal testimony. The department was neutral on this issue.

There was oral and written public testimony presented on preseason CDQ crab fishing. The majority of the Bering Sea crab fleet did not want the board to allow preseason CDQ fishing and favored ACR 27. CDQ group representatives testified against ACR 27, since preseason fishing would be a way to optimize the value of their quota. The groups noted that prices received for preseason CDQ crab could offset decreased prices for post-season CDQ crab.

The board's in-meeting committee met on March 21, 1999 at the Captain Cook Hotel. Supporters of the proposal raised fair start issues, possible negative economic impacts and product quality concerns. They argued that, if the CDQ vessels fished snow crab prior to the open access red king crab fishery, they would have an advantage with the knowledge of recent crab distribution (exploratory fishing). Most comments centered around the economic impact of the CDQ fishery putting any amount of crab on the market prior to or during price negotiations (export and ex-vessel) and they were concerned that it would most often be a negative impact. They were additionally concerned that a preseason CDQ harvest would place poor quality crab on the market, which would have a negative economic impact the open access fleet. They commented that CDQ groups already have a guaranteed harvest allocation and that if the groups were concerned about post season prices and scratch fishing, they could fish during the open access fishery.

Opponents of ACR 27, argued for status quo within the guidelines of their public testimony. They also stated it was not in the CDQ groups' best interest to market poor quality crab, that they would be harvesting only 50% of their 7.5% CDQ allocation and that any advantage to the groups would even out by harvesting picked over crab after the open access fishery. There was no consensus for a public panel recommendation nor was there a board committee recommendation. There was discussion about a proposal which essentially held the provisions of the industry compromise. The issue needed board debate.

ACR 27 was discussed on March 25 and 26, 1999. The board began by discussing Committee D's summary, and moved to the PNCIAC's recommendation. The board clarified points with department staff and discussed whether there were any enforcement problems. The board discussed an impending agreement between the two interested parties and tabled the issue to the following day in anticipation of receiving an agreed upon compromise. Overnight, a compromise was reached by several of the industry participants and the CDQ groups. The language was presented to the board at 9 a.m. on March 26. After some discussion addressing national

standards, health of stocks, and fair start, the board again tabled the issue and designated a period for reviewing public input on the industry compromise. After reviewing public comments, the board addressed possible conflicts on fair start issues by reconsidering proposal 355 before resolving the CDQ preseason fishing option. In the final debate, the board covered the Magnuson-Stevens Act national standards, the size and health of the resource, the criteria and standards incorporated into the March 1997 CDQ management plan, and the relatively small amount of crab that would be on the market early if preseason fishing were allowed. The board decided to accept the general principles of the compromise item.

Board Decision

The board noted that its action was, in some ways more restrictive than the original proposal, acknowledging that the original proposal was only to restrict the timing of CDQ fisheries. The percentage the CDQ groups were allowed to harvest preseason was reduced from the existing 50% to 30%. Another added restriction was the 50 million pound minimum GHL provision, which eliminated the possibility of a preseason CDQ fishery for most of the smaller CDQ fisheries, such as the St. Matthew, Pribilof, and Bristol Bay fisheries, at least in the foreseeable future. The Board confirmed on the record that this action would not except the CDQ fisheries from the restrictions of the preseason 14-day stand down period for opilio and the 30-day stand down period for king and bairdi fisheries adopted earlier by the Board. In other words, any vessel or person that participated in a preseason CDQ fishery during the applicable stand down period would be ineligible to participate in the open access fishery.

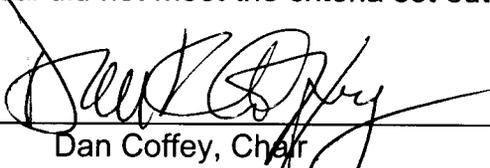
The board's action in March 1999 provided more definition and restrictions to the existing regulation to recognize some of the concerns of industry, yet balance the needs of the CDQ groups.

Appeal

The board's decision on preseason CDQ fishing was appealed by Alaska Fisheries Conservation Group. The appeal cited lack of specific Congressional approval and not meeting national standards.

A Board of Fisheries teleconference on the appeal of ACR 27 (among others) was held on May 14, 1999. The board found the appeal did not meet the criteria set out in 5 AAC 39.998 and denied the appeal.

ADOPTED: Oct. 29, 1999
Fairbanks, Alaska



Dan Coffey, Chair
Alaska Board of Fisheries

VOTE: _____

ALASKA BOARD OF FISHERIES
Findings for Bering Sea Tanner Crab Management Plan
Incorporating a New Harvest Strategy
99 - 188 - FB

The Board of Fisheries considered a new harvest strategy for Bering Sea/Aleutian Islands (BSAI) Tanner crab (*Chionoecetes bairdi*) under Proposal 281. The Board took staff reports, heard public testimony and Fish and Game Advisory Committee reports, and then submitted this proposal to Committee A for discussion and recommendations.

Two written staff reports were submitted as supporting documentation for this proposal: "Bering Sea Bairdi Tanner Crab Fishery, 1998" (RC4, Tab 4) by Rance Morrison, and "Overview of Population Dynamics and Recommended Harvest Strategy for Tanner Crabs in the Eastern Bering Sea" (RC4, Tab 18) by Jie Zheng and Gordon Kruse.

Two oral staff reports were presented relevant to this proposal: "Stock and Fishery History and Current Status of Tanner Crabs in the Eastern Bering Sea" (RC4, Tab 31), by Gordon Kruse, Rance Morrison and Jie Zheng, and "Review of harvest strategies for Tanner crabs" (RC4, Tab 33) by Gordon Kruse, Dan Urban and Jie Zheng. ADF&G Staff Comments were presented in RC 4, Tab 37, and Page 8. The advisory committee comments (RC 110), public comments (RC 69, 85, 102, 111), staff comments (RC 4, Tab 37), and record copies (RC 102) related to the various proposals are identified in attachments to the committee report.

This proposal intended to establish a Tanner crab management plan for the Eastern Bering Sea Subdistrict of Area J. The plan is intended to improve fishery management by linking harvest rates to changes in stock productivity indexed by recruitment strength. Higher harvest rates are applied during an upward recruitment cycle and lower harvest rates are applied during a downward recruitment cycle. Moreover, a threshold is established below which no fishing is allowed to protect the breeding population. These features foster the rebuilding of the Eastern Bering Sea Tanner crab stock that was classified as "overfished" by the Secretary of Commerce in March 1999 under the federal Fishery Management Plan. There are seven key points to the harvest strategy, as described below.

- (1) Establish a threshold level of abundance of 21.0 million pounds of mature (>79 mm carapace width) female Tanner crab biomass. The commercial fishery for Tanner crabs in the Eastern Subdistrict of the Bering Sea District may open only if an analysis of preseason survey data indicates that the population has met or exceeded this index of abundance. The commercial fishery for Tanner crabs in the Eastern Subdistrict of the Bering Sea District will not open if preseason survey data indicates that the population is below this index of abundance. The public asked for clarification of definitions of several terms related to the proposal. They asked the Department to indicate in what years would the Tanner crab season have been closed under this

plan. The department indicated that the fishery would have been closed in 1985, 1986, 1996, 1997 and 1998, if this plan had been in effect.

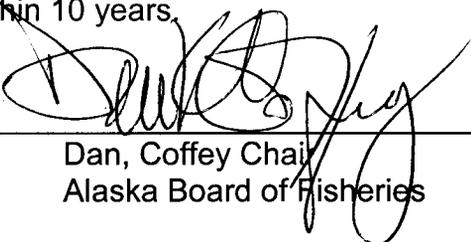
- (2) Establish a 4.0 million pound minimum threshold level for any harvest occurring incidental to the Bristol Bay red king crab fishery and in any directed Tanner crab fishery in the area east of 168° W. The department stated that this level was indicated on the basis of harvest levels that were manageable as bycatch in the Bristol Bay red king crab fishery. The public was concerned about why this harvest strategy utilizes mature female biomass rather than number of animals in calculating threshold levels. The department stated that this was due to the fact that reproductive output and, ultimately, recruitment to the fishery is more closely related to parental biomass rather than number of animals.
- (3) Establish the exploitation rate when the stock is greater than or equal to 21.0 million pounds of mature female biomass but less than 45.0 million pounds of mature female biomass. In this case the harvest rate will be 10% of the molting mature male abundance or 50% of the exploitable legal size male abundance, whichever is less. The public asked the Department to define legal size (5.5" width or greater) and molting, mature males (100% of newshell and 15% of oldshell crabs 113 mm or greater width) as well as exploitable legal size males (100% of newshell and 32% of oldshell crabs 5.5" or greater in width). The department also explained that the National Marine Fisheries Service annual trawl survey is used to collect data for abundance estimation using a length-based analysis (LBA) model. Public suggested that perhaps the 50% cap on legal male harvest mentioned above is too high and that perhaps 20-30% would be more appropriate.
- (4) Establish the exploitation rate when mature female biomass is equal to or greater than 45.0 million pounds. Under this scenario, the harvest rate is set at 20% of the molting mature male abundance or 50% of the exploitable legal size abundance, whichever is less. The public asked why the maximum allowable harvest rate is greater for Tanner crabs than for red king crabs in Bristol Bay. The department stated that this is due to differences in rate of reproduction, mortality, and biology of the two species. The public also asked how this harvest rate compares to those utilized in prior fisheries. The department responded that this is generally a lower harvest rate, except that it is higher when the stock is increasing in abundance. The public indicated its support for this part of the strategy.
- (5) Establish separate guideline harvest levels for both sections of the Eastern Bering Sea Sub-District based on the respective abundance of animals in those areas. The western portion is between 168° W. long. to 173° W. long., and the eastern portion is defined as waters east of 168° W. long. Based on the respective abundances of molting mature male crabs, the guideline harvest level for the Eastern Subdistrict of the Bering Sea District would equal

the sum of the guideline harvest levels for the areas east and west of 168° W. long. if both areas are opened to fishing. This language was supported by industry.

- (6) Add a provision dealing with the situation when any portion of the Eastern Sub-District is reopened to fishing after being closed to all commercial fishing due to low abundance in the preceding season. The reopening will occur when one-half the computed GHL is greater than or equal to four million pounds. If the fishery remains closed because the calculated GHL does not reach 4 million pounds due to a precautionary 50% reduction, then the following season may open if the calculated GHL is at least four million pounds. There was some public confusion as to when a fishery could occur under this scenario, so the Department clarified that the 4.0 million pound threshold need only be reached one year for a fishery to occur the next year.
- (7) The final part of the strategy states that the Department will consider the reliability of the estimates, the manageability of the fishery, and other factors necessary to be consistent with the sustained yield principles, and the best scientific information available. There was support for this section. The public asked how the harvest strategy fit in to the federal Fishery Management Plan's requirements for rebuilding the Eastern Bering Sea Tanner crab stock. The Department stated that the harvest strategy is one of three parts; the other parts are by-catch reduction measures and habitat protection. To describe these requirements, RC 104 was introduced.

In considering staff reports, the status of the resource, and committee and public support for the proposal, the Board of Fisheries adopted the proposed new harvest strategy including all seven points listed above. This adoption was made in the belief that this harvest strategy has a rebuilding capability that complies with federal requirements to rebuild the Eastern Bering Sea Tanner crab stock to levels capable of supporting maximum sustainable yields within 10 years.

ADOPTED: 10/29, 1999
Fairbanks, Alaska



Dan, Coffey Chair
Alaska Board of Fisheries

VOTE: 60-1
one abstention

**ALASKA BOARD OF FISHERIES
FINDINGS ON BRISTOL BAY RED KING CRAB FISHERY
MARCH 1999 MEETING, ANCHORAGE**

I. Introduction

At its March 1999 meeting in Anchorage, the Board of Fisheries (Board) adopted regulations that (1) move the opening of the Bristol Bay red king crab season from November 1 to October 15 (2) and extend the preseason gear operation restriction from 14 to 30 days and include trawl with the types of gears that are prohibited for those who want to participate in the crab fisheries. These written findings explain the board's reasoning for these regulatory actions and satisfy the requirement for written findings found in the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab (FMP).

II. Season Change

The Board moved the Bristol Bay Red King Crab season up by sixteen days to benefit the industry by reducing the time between the Pribilofs and St. Matthews king crab fisheries, saving time and money for the fleet. Information before the Board showed that an extended period between fishing seasons makes it both expensive and difficult for vessels to hold crewmembers, requires vessels to remain proximal to the Bering Sea grounds for long periods that raise costs, and makes vessel yard maintenance difficult to schedule. On the other hand, moving the season up two weeks would help address these concerns and provide a longer maintenance window prior to the C. opilio Tanner crab fishery. The Board recognized that an earlier season would have an impact on those vessels that fished for groundfish in the same area and then participated in the crab fishery because they usually fished through October. But the Board weighed that impact against the benefit to the rest of the fleet and found the benefits to the fleet from an earlier season outweighed the negative impacts.

The Board also noted that the earlier season was likely to result in somewhat better weather and vessel safety conditions. The Board acknowledged that the earlier season might result in some slight increase in dead loss and meat fill, but found those impacts insignificant when weighed against the benefits of an earlier season.

A. The Board Information-gathering and Meeting Process

The Board acted on a proposal that had been submitted to it by a crab fisherman before April 10, 1998, almost a year before its March 1999 meeting in Anchorage. This proposal, along with all other proposals submitted the Board for consideration during its 1998-99 meeting cycle, was published in the Board's annual proposal book and was

distributed to the public in July 1998. The proposal was reviewed by user groups and advisory committees, including the Pacific Northwest Crab Industry Advisory Committee (PNIAC), which was established by the FMP to provide nonresidents of Alaska access to the FMP and Board regulatory process. At its meeting in Seattle on January 6, 1999, the PNIAC voted to oppose Proposal 287 and support the status quo. Public Comment 37 at 4, March 1999 Board of Fisheries Record, RC 1.

The Board recognized that Proposal 287, as a request to move the opening season date from November 1, to October 10, was an FMP Category 2 framework issue, requiring consideration of specific FMP criteria and the Magnuson-Stevens Act national standards, as well as consistency with state legal requirements.

The Board took staff reports at the beginning of the meeting, took public testimony, and then broke into committees to address similar proposals. Proposal 287 was assigned to Committee E – Bristol Bay King Crab. See, RC 142, Committee E Report. Other relevant reports or comments to the Board were: Staff Reports, RC4 (Tabs 1, 2, 13, 14, 17, 27, 28, 29); Staff Comments, RC4 (Tab 37, page 11); Advisory Committee Reports, RC110; and Public Comments, PC 37 and RC69, RC85, RC102, RC111.

During committee discussion of this issue, it was noted that this proposal would move the opening closer to the Pribilof and St. Matthew fisheries in the Bering Sea. The stated basis for the proposal was to avoid “higher start-up costs for the entire industry. Weather concerns are also a factor.” The goal was to reduce down time between the early red/blue king crab fishing seasons and the Bristol Bay red crab season. The proposer stated that he believed that moving the November crab fishery closer to the September crab fisheries would provide real benefits by eliminating the cost of mobilizing vessels and processing crews for the Bristol Bay season and allow a time window for vessel maintenance.

The committee discussed the pros and cons of moving the start date from November 1 to October 10. Though many agreed there were benefits, many of the participants were uncomfortable with a starting date as early as October 10. The proposer suggested moving the opening date to October 15. There was lengthy discussion on whether to move the start to the 10th or the 15th of October. There was consensus from all but one member of the public to move the date to October 15.

The Committee report and public testimony indicated that the following industry points for and against this proposal were raised in the committee discussion:

Points against:

- (1) crabs may have less meat fill than if the season starts on November 1;
- (2) possible dead loss if surface and bottom temperatures are greatly different;
- (3) fishermen participating in the Bering Sea Korean hair crab fishery would be unable to participate in the Bristol Bay red king crab fishery;

(4) trawl vessels which have fished in this area would be excluded regardless if the date were the 10th or 15th of October, because the trawl fleet normally fishes through the end of October.

Points for:

- (1) moving the red crab season just a few weeks earlier allows better market timing to distribute crab into the Japanese holiday season markets;
- (2) better weather in October for small boat safety concerns;
- (3) extra time for vessel maintenance after red crab fisheries and before the start of Bering Sea *C. opilio* fishery;
- (4) less down time between the Pribilof/St. Matthew and Bristol Bay king crab fisheries, which would save the fleet and processors money;
- (5) eliminating trawl vessels from 'crossing over' to the Bristol Bay red king crab fishery from the pollock fishery.

Discussion covered all of the above points and concerns. The Department indicated that it would work with the Bering Sea Korean hair crab fishers to eliminate their fishery's conflict with the Bristol Bay red king crab fishery if this proposal were adopted.

One member of the committee representing trawl catcher vessels expressed concern that this proposal will exclude some crab vessels that have historically also fished in the Bristol Bay red king crab fishery after the trawl season. He stated that this would be the case regardless if date was set for the 10th or the 15th of October because the trawl fleet fishes through the end of October.

From the committee, the public panel recommendation was to move the opening date to October 15. This recommendation was a consensus from all but one member, representing trawl fishers. The recommendation from the Board committee members was also to move the opening date to October 15 and provide the full Board with regulatory substitute language for Proposal 287.

B. Board Deliberations of Proposal for Season Change

The full Board received the committee minutes and a review by Committee Chair who described issues brought forward in the Committee. Transcript of Board Deliberations on Proposal 287 (Tr.) at 1-4. Substitute language from RC 142, p. 17, amending 5 AAC 34.810(b)(1) to provide a starting season date of October 15, was placed before the Board for its consideration and vote. Tr. 1. The Board went through the FMP framework for fishing seasons and discussed the various National Standards pertinent to this decision. As explained below, the Board attempted to meet the economic, safety and social concerns without significantly reducing quality or increasing deadloss.

1. The Board Properly considered the FMP Category II criteria for fishing seasons.

Regulations opening commercial crab fishing seasons are FMP Category II measures. The FMP contains specific criteria to be considered by the Board in adopting such measures. FMP at 35-36. The Board's consideration of the criteria is outlined below.

Minimization of deadloss: The FMP lists minimization of deadloss as one goal of the FMP: "Deadloss has been found to increase if crabs are in soft-shell condition, if they are held for long time periods, if holding tanks are contaminated with fresh or warm water, or if crabs are handled too often." FMP at 36.

The Board recognized that the pre-1990 September seasons saw more dead loss than the current season. Tr. 8-11. ADF&G presented information on the historical rates of deadloss in the fishery. RC 4, Tab 2 at 7-8. The data indicated that during the years when the season opened on September 25 (1985-1989), the average rate of deadloss was .0094. RC 4, Tab 2 at 7. Although, if one extremely high year, 1986 with a rate of .0249, was removed from the equation, then the average rate for the remaining years dropped to .0058. *Id.* The average deadloss rate for the years that the season opened on November 1 (1990-93, 1996-98) was .0044. *Id. at 8.* Four of the later years (1990, 1991, 1993 & 1998) had higher deadloss rates than two of the earlier years (1985 & 1988). *Id. at 7-8.*

There was some speculation that increases in deadloss were caused by the temperature differential between the surface and the bottom. In the summer months, the temperature is more stratified, but by November the stratification has broken down. Tr. 9. But in the Board discussion, they recognized that surface water temperatures change from year to year. Tr. 9. The Board asked staff whether a two-week change was significant. Tr. 10. Staff reported to the Board that changes in dead loss were more associated with fresh water than ocean temperature, and that any "difference in dead loss due to temperature over a two-week period would be quite insignificant." Tr. 11. The Board agreed with that conclusion. Tr. 12, 16-17.

Although not expressly expanded upon during the March Board meeting discussion, the Board is aware that past Board records indicate that dead loss was a function of crab caught in pre-season bait-up periods and then held in holding tanks when fresh water was prevalent and adequate processing not available. See, Tr. 11. When processing capacity would catch up with production, dead loss would decline. In early years, large GHs and long seasons exacerbated this problem and increased dead loss. Fishermen tended to overload their tanks with crab and hold them too long before off-load.

Product quality: Another goal under the FMP for opening seasons is achieving the best possible product quality. FMP at 36. The Board discussed the potential for crab having more or less meat fill depending on the starting date. Tr. 7-8. Some of the information indicated that crab caught in September were smaller and weighed less than those caught in November. Dr. Otto indicated that the difference may have been partially due to differences in recruitment and thus the size of crabs available to the fishery. Crabs gained about a pound between the old and new seasons. The impact of a two-week

period on weight gain, as opposed to five weeks, was less certain. Tr. 8. The Board concluded that the closer the start date was to September 25, the previous start date, the less meat fill expected, and the closer to November 1, the more the fill. So somewhere in between may produce some amount of quality consideration. The Board felt that any loss in meat fill would be offset by the advantages of an earlier season.

Minimization of fishing during severe weather conditions: Another FMP goal is to minimize fishing during severe weather conditions. FMP at 36. In regards to this issues, some small vessel owners testified that an earlier season would have better weather for small boat safety. RC 142 at 6. But here again, the Board noted that though the old September season was best and November period is more of a concern, moving it only two weeks is not a huge safety gain. Tr. 12, 17.

Minimization of the cost of industry operations: Another FMP goal for opening seasons is to minimize the cost of industry operations. FMP at 36. The Board noted that hiring and keeping crews was clearly problematic throughout these fisheries because of the shortening of seasons and because declining fishing productivity influences prices and, therefore, crew shares. Tr. 12. Extended periods between fishing seasons makes it both expensive and difficult to hold crewmembers. Tr. 12. Additionally, it requires vessels to remain proximal to the Bering Sea grounds for long periods that raise costs and make vessel yard maintenance difficult to schedule. Tr. 3, 12. Moving the season up two weeks would help address these concerns and provide a longer maintenance window prior to the opilio fishery. Tr. 3, RC 142 at 6.

Coordination of fisheries: The FMP also requires the Board to consider methods that coordinate the fisheries that have the same demands on harvesting, processing and transportation systems. FMP at 36. Additionally, it states that seasons can be timed relative to one another to spread fishing effort, prevent gear saturation, and allow maximum participation in the fisheries by all elements of the crab fleets. *Id.* Overlapping or reducing the space between various crab fisheries achieves this goal for the crab industry.

The demands on harvesting, processing and transportation systems in the crab fishery did not appear to conflict with those other fisheries that are ongoing at the same time. The Board was given no information to that effect. There appeared to be no specific concerns of gear saturation or spreading of fishing effort presented by a sixteen-day advance in the opening of the season.

Concern over participation of the Korean Hair crab fleet was dealt with, and the Board recently took steps to address participation by the Area O Brown king crab fleet. Tr. 16.

The Board was quite aware that an earlier season would have an impact on the participation in the crab fishery of those trawl vessels that fish in the same area for pollock during a season that would overlap with tan earlier season. RC 132, Tr. 18. The record indicated that crabber/trawlers that fish in the Bering Sea B-season pollock fishery

would often be forced to decide between fishing throughout the entire B-season pollock fishery or stopping early to participate in the Bristol Bay king crab fishery. Tr. 6-7. This would have the tendency to reduce the number of trawl participants in the crab fishery.

One industry committee member indicated that moving the season would benefit dedicated crab operators since it could reduce opportunity to trawl cross-over vessels who wanted to fish Bristol Bay red crab. But the Board felt that this was an inappropriate basis for them to make a decision, as expressed by Vice-chair Dan Coffey:

[A]s I said in our earlier presentation, I don't think we should, by indirection, do that which we are not allowed to do directly, which is limit entry into a fishery. If the effect of our action is justified by other things, such as the pluses that Mr. Engel identified and things in the – in the management plan, which we've been discussing, and it has a consequence of excluding folks from the fishery, but we're doing it for legitimate reasons within the management plan and within our authority, well, so be it, that happens a lot, the unintended allocative consequence, because we're facing that all the time. And – I'm perfectly willing to accept those consequences. What I'm not prepared to do is to take action that is not otherwise justified simply for the purpose of excluding people from the fishery, particularly in light of the instructions for maximum participation in the fishery....

Tr. 18-19.

The earlier season adopted by the Board does not "limit access" to the fishery as contemplated by FMP Category I provisions. The circumstances described there involve limitations on admission to a user group and restrict who can participate in the fishery at all.

In this case, the start date does not exclude any fishers from participating in the Bristol Bay red king crab fishery unless by their own choice to participate in another fishery. Every regulation that limits a fishing season has the potential to require some who might otherwise be able to participate, but want to participate in another ongoing fishery, to make tough decisions.

In this fishery, as in any other fishery such as salmon or groundfish, there are usually other fisheries that overlap or occur at the same time, preventing fishers from participating fully in both. Considering the actual level of annual participation by vessels that fish crab; it is obvious that each participant must annually evaluate whether to participate in a particular crab fishery or use their vessel to some higher economic benefit. The election to participate in a particular fishery is a universal quandary that fishermen face annually. The Board made changes for legitimate reasons within the FMP and within its authority, and unintended consequences occur frequently in fishery management. If the Board could not allow any overlap in such fisheries, consideration of all other criteria and public policy concerns would be lost to the Board.

Because the Board recognized that a decision might have allocative effects, even though not intentional, the Board reviewed and discussed the allocation criteria found in AS 16.05.251(e).

Reduction of costs of enforcement and management: The department did not believe the reduction of enforcement and management costs before, during and after the season would be significantly impacted by the change in start date.

2. The Board properly considered the Magnuson-Stevens Act National Standards

Since this was a Category II measure with specific criteria laid out for the Board's consideration in the FMP, the Board did not spend a lot of time discussing the Magnuson-Stevens Act National Standards, presuming that the specific FMP criteria were designed to produce regulations consistent with the National Standards. The Board, in reviewing each of the National Standards as they relate to this proposal, found that many of the standards were not applicable, and that those that were applicable were largely irrelevant due to the small shift in season timing.

National Standard 1: The Board did not believe the prevention of overfishing was an issue in its decision. Tr. 13-14.

National Standard 2: The Board believed it had "some pretty good data on the criteria" to consider and did not think it was "relying on anything other than the best scientific information." Tr. 14.

National Standard 3: It didn't believe management of the crab stock as a unit throughout its range was at issue. Id.

National Standard 4: As to discrimination between residents of different states, the Board felt there was no discrimination involved in its decision because there were both state residents and nonresidents involved in the fisheries, and that season changes did not discriminate relative to residency. Tr. 14.

National Standard 5: Even though not expressly addressed to the National Standard 5, the Board decision was based largely on its desire to promote efficiency in the utilization of the the Bristol Bay king crab stocks. Tr. 3, 12, 16.

National Standard 6: The Board found little guidance in this standard. Tr. 14.

National Standard 7: Even though not expressly addressed to the National Standard 7, the Board decision was based largely on its desire to minimize costs in the utilization of the the Bristol Bay king crab stocks. Tr. 3, 12, 16.

National Standard 8: The Board felt that determining the effect on communities was very, very difficult to determine, and could not see how the season change made a difference. Tr. 15.

National Standard 9: The minimization of mortality of bycatch was discussed but not felt to be significantly affected by the season change.

National Standard 10: While the Board felt like an earlier season meant it would be a little safer for human life at sea, it also believed the magnitude of the change contemplated by the regulation would outweigh all other considerations. Tr. 15.

Generally, the Board noted that the primary focus would be on deadloss, quality and safety – but only in respect to small incremental changes. What seemed to be industry’s real benefit, and the purpose behind the proposal, was to minimize the cost of industry operation. All of the other items were a balance, one against the other, but only to small amounts of gain or loss. Tr. 15.

III. Preseason Gear Exclusion

At its March 1999 meeting, the Board amended its regulations that already required participants in king and Tanner crab fisheries to refrain from operating any pot gear during the 14 days immediately prior to the seasons to include trawl gear in the restriction and in the king and *C. bairdi* Tanner crab fisheries, to extend the preseason exclusion period from 14 to 30 days. The Board took this action to close any loopholes to the “fair start” of the seasons, and to maintain a slower pace in fisheries like the Bristol Bay red king crab fishery, which are otherwise subject to overfishing. The Board’s intent was to remove all opportunity for prospecting, and not to just react to accusations of past prospecting.

A. Historical Background

Since 1987, the Board has had regulations that required participants in king crab fisheries to refrain from operating gear in the area in the 14 day period before the season opens. The purpose of this restriction was to prevent the opportunity for prospecting or early fishing by crab fishermen, to slow down the pace of the fisheries and to put all participants on a level playing field at the opening of the season. Originally, the only gear restricted was king and Tanner crab pots. Former 5 AAC 34.050(j). But in the fall of 1989, both NMFS and ADF&G noticed a large increase in the registration for the cod pot fishery in the Bristol Bay area prior to the red king crab fishery. With NMFS’ cooperation, an emergency regulation was adopted to exclude pots of any kind during the days leading up to the king crab season. Emergency Regulation 5 AAC 34.050(k) (Eff. 9/15/89 to 1/12/90, Reg. 112). By the following season, the amendment had been made permanent, excluding the operation of any kind of pots to prevent the opportunity for prospecting for crab under the guise of cod fishing with pots. 5 AAC 34.050(j) (Eff. 9/19/90, Reg. 115)

From a historical statewide perspective, the Board has needed to address the reoccurring concern with vessels prospecting for high valued species prior to that species' season opening. The original regulation allowed a preseason bait-up period which is clearly within Category 3, gear placement and removal. Because of dead loss concerns, the BOF stopped allowing preseason bait-up periods.

To assure that no vessels were on the grounds early with baited gear, they implemented tank checks and preseason gear exclusion periods in 1987 to preclude prospecting with commercial, subsistence or personal use crab pots. This was a case where one regulation (pre-season bait up) rolled into the other (gear exclusion /tank checks). It was modified two years later to include all pot gear after a large portion of the crab fleet started fishing P. cod with pots on the red king crab grounds just prior to a crab opener. A further illustration of statewide prospecting concerns was addressed this year (1999) by the Board when it adopted a 30-day preseason restriction period for the red and Tanner crab fisheries in Southeast Alaska. Since groundfish trawling is not allowed in Southeast, trawls were not included in the regulation.

B. Public Testimony and Committee Process

The Board had before it several proposals dealing with the preseason gear exclusion period for the BSAI crab fisheries. Proposal 291 was submitted by the department and would have increased the preseason gear exclusion from 14 days to 30 days for only the Bristol Bay red king crab fishery. Proposal 354 would have included all types of gear, including trawl gear, in the current 14-day exclusion period for all king and Tanner crab fisheries. Proposal 355 sought to include trawl gear in the exclusion, as well as to extend the existing 14-day preseason gear exclusion period to 30 days in all king and Tanner crab fisheries. Proposals 354 and 355 were submitted by Arni Thompson, executive director of Alaska Crab Coalition. According to comments accompanying these two proposals, they were intended to provide a "fair start" to all crab fishermen by requiring a preseason gear exclusion period of 30 days between using sport, subsistence or commercial pot or trawl gear on the commercial crab grounds prior to the commercial crab fishery. RC 1.

These proposals had been submitted to the Board before April 10, 1998, almost a year before its March 1999 meeting in Anchorage. These proposals, along with all other proposals submitted the Board for consideration during its 1998-99 meeting cycle, were published in the Board's annual proposal book and were distributed to the public in July 1998. The proposals were reviewed by user groups and advisory committees, including the Pacific Northwest Crab Industry Advisory Committee (PNIAC), which was established by the FMP to provide nonresidents of Alaska access to the FMP and Board regulatory process. At its meeting in Seattle on January 6, 1999, the PNIAC voted to endorse Proposals 291 and 354, and to postpone comments on Proposal 355 until ADF&G completed its analysis. RC 1, Public Comment 37, page 5.

The Board took staff reports at the beginning of the meeting, took public testimony and then broke into committees to address similar proposals.

Proposal 291 was assigned to Committee E – Bristol Bay King Crab issues. RC 142 is the committee report. Board Committee Members were Don Coffey (Chair), Virgil Umphenour, and Russell Nelson. Staff and industry committee members are listed in RC 142. Other relevant reports or comments to the Board were: Staff Reports, RC 4, Tabs 1, 2, 13, 14, 17, 27, 28, 29; Staff Comments, RC 4, Tab 37, page 19; Advisory Committee Reports, RC 110; Public Comments, RC's 69, 85, 102, 111, and 132.

Proposals 354 and 355 were assigned to Committee D – Bering Sea/Aleutian Islands King Crab issues. RC 135 is the committee report. Board Committee Members were Ed Dersham (Chair) and Dan Coffey. Staff and industry committee members are listed in RC 135. Other relevant reports or comments to the Board were: Staff Reports, RC 4, Tabs 1, 3, 4, 19 (Federal Requirements), 20 (FMP), 27, 30, & 34; Staff Comments, RC 4, Tab 37, page 33; Advisory Committee Reports, RC 110; and Public Comments, RC's 69, 85, 102, 111 and 132.

In committee it was noted that Proposal 355 would include any and all fishing gear in a 30-day pot gear exclusion period prior to any king or Tanner crab fishery. RC 135 at 15. The proposal to extend the preseason restriction period and include trawl gear arose from the concern that trawl equipped crab vessels have an unfair advantage over other crab fishers. *Id.* Public testimony expressed concern that trawls vessels can use pelagic gear in the pollock fishery or bottom gear for cod or flatfish, right up to the registration deadline period for the king crab fishery. *Id.*

Trawl gear is clearly an efficient crab survey method. RC 135 at 15. However, fish ticket data does not show an increase in “average” catch of king crab by trawl vessels compared to similar length non-trawl crab vessels. *Id.* One person testified that pollock trawlers had done about as well as the “crab fleet average”. P291 Tr. 7; P355 Tr. 2. He found this surprising since the vessels are mostly operated by trawl fishermen, rather than crab fisherman, stating that this must prove that they were getting an advantage. *Id.*

In committee, the Public Panel Recommendation was a consensus in support of including pot and trawl gear. A consensus was not achieved on the length of the preseason restriction period. Some industry representatives wanted 30 days, some wanted 14 days. RC 135 at 15. Others felt that 30 days was too restrictive and that the change of the red king crab season to October 15 would solve the problem. The Board Committee members supported a 30-day restriction period and inclusion of both pot and trawl gear. Substitute regulatory language was drafted and proposed to the Board. RC 135 at 23. P355 Tr. 7.

C. The Board Properly Considered Applicable Standards of Law During Its Deliberations of the Proposals for Preseason Gear Exclusion

The Board first deliberated on Proposal 291, and using substitute language provided by the committee, amended the department's proposal to include trawl gear in the 30-day preseason gear operation restriction for the Bristol Bay red king crab fishery. The regulation was adopted on a vote of six in favor, zero against, and one absent. The Board later considered Proposal 355 in the context of Tanner crab only, since king crab had been addressed by the adoption of Proposal 291.

1. The Board's Consideration of the Magnuson-Stevens Act National Standards

National Standard 1: The Board addressed the problems of overfishing to achieve optimum yield of the crab stocks. Board member Larry Engel talked about the conservation problems posed by a very short fishing season and people with prior knowledge of the location of crabs, stating that "you could have severe conservation problems" and "very adverse consequences." P355 Tr. 8-9. The gear exclusion period is designed to prevent even the opportunity to prospect. The Board knew that "a trawl is a very effective survey device," noting that the Bering Sea crab survey was performed with a trawl. P291 Tr. 7. Without prior knowledge by fishermen of crab location or abundance, the pace of the fishery can reasonably be expected to be slower than otherwise. The Board's record is clear that a manageable fishery is important to ensure compliance with National Standard 1 to prevent overfishing and achieve optimum yield.

The Board noted that "fair start" purpose of the regulation was an important equity issue, but that there were also important conservation concerns with prospecting. The utilization of pots, trawls or any other gear to determine the location of crab concentrations in the preseason will only shorten the length of the season for a depressed stock fishery that the Board has been trying to lengthen to ensure conservation management. In fact, it would provide opportunities that are certainly contrary to the Board's attempt to rebuild these stocks and inconsistent with National Standard 1

National Standard 2: The Board's record makes it clear that the Board examined all the data that it had before making this decision. The Board's regulations were aimed at "potential" prospecting. The question was not whether prospecting had occurred, but whether the opportunity is there. Given the limitations of observer coverage in the trawl fishery and the capability of trawlers to catch crab with pelagic gear, there is no support for assertions that trawling does not present an opportunity for prospecting

National Standard 3: There is no question but that the Board manages the king and Tanner crab stocks as a unit throughout their ranges.

National Standard 4: The Board's actions were certainly consistent with National Standard 4. There is absolutely no evidence that the regulations discriminate

between residents of different states. Furthermore, a major purpose of the preseason gear exclusion was to provide a fair start to all participating fishermen. The preseason gear exclusion closes the area for 30 days prior to the fishery start date to pot and trawl operation by those fishermen who wish to fish in the directed crab fishery. The goal was to level the playing field. As Board member Dan Coffey reiterated:

Looking first to the national standards, I think the – one of the primary considerations here should be in 4 – or section 4, which deals with fair and equitable to all fishermen. I – I think we all know that the – survey that's conducted on Bering Sea king crab is done with a trawl, a trawl is a very effective survey device, mechanism, method and – and therefore we have that and – and so if someone is permitted to trawl in the area, then what I would be concerned about is going fishing the next day, or the next few days or however long it takes for the data, which they were able to trawl up to become outmoded and they would have an unfair and inequitable advantage over those fishermen who are not permitted to trawl in the period prior to the fishery. If you did that, you would allow an individual, corporation or other entity to – to potentially acquire an excessive share of that fishery which is another thing we're supposed to avoid.

P291 Tr. 7-8.

Under the federal groundfish observer program, vessels less than 125 feet only have 30% groundfish observer coverage, and vessels without observers are known to sometimes behave differently than when observers are on board. P355 Tr. 4. Thus, the Board was concerned that 70% of the time, pollock or flatfish trawl vessels less than 125 feet in length are fishing without observers, which provides an opportunity for undetected prospecting. P355 Tr. 4. Data indicated that October observer coverage is low. The opportunity to prospect for crab with trawl gear by a significant portion of the crossover vessels is very real.

The Board's regulations were intended to remove a potentially unfair and inequitable advantage that trawlers have over other crab vessels that do not have gear on the grounds prior to an opening.

National Standard 5: National Standard 5 addresses conservation and management measures promoting efficiency in the utilization of fishery resources without economic allocation as a sole purpose. There was no evidence that the preseason gear exclusion promotes inefficiency in the utilization of the king crab stocks. There was no evidence that allowing trawlers to fish with the opportunity to prospect would promote efficiency in the utilization of crab stocks except as to their efficiency. The Board does not believe that promoting efficiency among a select portion of a user group could have been Congress' goal. As noted above, the Board had very valid concerns for the fairness and equity in the fair start of the fisheries, and was especially concerned about the potential for overfishing in very short seasons. Moreover, there is no indication in the record that the Board's purpose was economic allocation, at all, much less its sole purpose.

National Standard 6: The Board's actions were consistent with National Standard 6, which deals with taking into account and allowing for variations among, and contingencies in, fisheries, fishery resources, and catches.

National Standard 7: National Standard 7 deals with the minimization of costs and avoiding unnecessary duplication. The Board fully understood the costs and benefits of its regulations

National Standard 8: Further review of National Standards by the Board indicated how a fair start does not provide advantage (prospecting) to one area or community over another, and how this is then fair and equitable to all fishermen.

The Board considered whether or not to include the CDQ vessels in the restriction, noting that the Council had many regulations that exempted CDQ vessels. The Board rejected any exemption for the CDQ fleet, stating that a fair start had to be fair to all.

The Board did, however, on reconsideration of Proposal 355, vote to reduce the preseason gear exclusion period for *C. opilio* Tanner crab from 30 back down to 14 days, based largely on its concern for full participation in this fishery by CDQ groups. Proposal 355 Reconsideration Transcript at 6-7.

National Standard 9: Board member Dan Coffey commented on the bycatch implications presented by the proposals:

I think that by allowing a fisherman – or the opportunity for this prospecting occurs, we can have a negative effect on the fishery and a negative effect on the resource as well. I think if prospecting occurs, we're going to have a lot of bycatch going on, and I think we're going to have a lot of mortality associated with such bycatch.

P291 Tr. 5; see, also, Board member Umphenour's comments at P291 Tr. At 20. Staff indicated that NMFS observer data of pollock trawl vessels showed a spike of increased king crab bycatch in early October. P291 Tr. 6. In fact, at least since 1993, in years when the red king crab fishery has been open in Area T, the observed bycatch of red king crab has peaked from 4,000 to 7,000 RKC during the October period; an occurrence that doesn't appear in years that the Bristol Bay red crab fishery is closed. *Id.*

National Standard 10: The Board regulations were not inconsistent with the goal of promoting the safety of human life at sea.

2. Consideration of State allocation criteria under AS 16.05.251(e).

Because this proposal has unintended allocation implications, the Board went through its state allocation criteria. Of these state criteria, the Board noted that the availability of alternative fishing opportunities inherently forces fishers to make a fishery participation choice. In fact, in the 1999 opilio fishery, a number of these same vessels chose to forego their A-season Pollock harvest to fish opilio –something they had not done in the past.

3. The Board considered the impact of the regulations on trawl vessels.

Because of the concerns expressed in RC 132, the Board specifically discussed and evaluated each of the concerns laid out by the trawl vessel representative. RC 132 stated that trawlers would lose a portion of their fall groundfish fishery if they chose to go crab fishing. The Board notes that it was only after the 1990 Board action to move the season start date to November 1 that these vessels were able to participate. The pollock fishery consists of an A1, A2, B and C season. These vessels are therefore not excluded from pollock fishing, but must choose whether to participate in the entire pollock B/C season or participate in the Bristol Bay crab fishery. Such choices are common. For example, 16 pollock vessels fished the January 1999 C. opilio season. Five of the vessels first fished pollock and then switched to opilio. But 11 of these vessels forewent their option to fish A-season pollock and chose to fish crab. Further, as the Board understands the discussions under the Council's AFA options, these vessels may form co-ops which could accommodate some seasonal adjustment within co-op fleets (some fish early-some fish late). None of these actions were intended or considered to include or exclude these vessels from participation, only to exclude the opportunity to prospect.

The actions of the Board require that registrants in crab fisheries conform to conservation and management measures necessary to conserve and manage crab stocks. No vessel is excluded, only under certain conditions in a vessel's groundfish endeavors must they elect one fishing opportunity over another. If vessel owners wish to register for BSAI crab fisheries they must prosecute groundfish fisheries in a manner so as to preclude their ability to prospect for crab during the specified fair-start interval. If groundfish fishing occurs outside the crab registration areas, a vessel may still participate in the crab fishery.

There was the statement in RC 132 that prospecting would not occur, mostly because it would use up the prohibited species cap (PSC) limit. However, as the Board understands PSC restrictions, 70% of the fishing time of vessels less than 125 ft. is unobserved for bycatch. Additionally, prospecting for red crab would most likely occur only toward the end of the fall groundfish fishery, and would not tend to shut down the pollock fishery. Data indicated that most of the Bristol Bay red king crab bycatch occurs in the Federal reporting area 509, one of the main commercial crab grounds.

Finally, RC 132 states that the Board does not have legal authority to create a federal fair start that affects the Bering Sea groundfish fisheries. The Board acknowledges that it does not have authority to manage groundfish in federal waters, nor,

by imposing this restriction on the crab fishery, does it intend to. But the Board does have authority to regulate vessels, be they herring vessels, salmon vessels, Dungeness, king, or Tanner crab vessels from anywhere in the state, or groundfish vessels that wish to fish BSAI crab.

The Board's authority to manage crab fisheries in the EEZ arises under the FMP and the Magnuson-Stevens Act and must be consistent and comply with their associated statutory and regulatory requirements to conserve the resource. Compliance with these statutory and regulatory conservation standards does not become unnecessary simply because a conservation measure may have effects on other fisheries, including the groundfish fishery. The groundfish fisheries do not take precedence over the crab fisheries. The Board properly considers such effects on other fisheries, particularly in the context of the National Standards, but concerns about those effects do not trump conservation concerns or other standards the Board must consider. This regulation affects crab fishing vessels and is an extension of other regulations across the state that the Board has adopted or modified to curtail prospecting in state managed crab fisheries. The Board discussed the substantial impacts of their regulations to various users across the state in bringing statewide consistency to regulations.

The following information also supports the Board's decision on this issue. Regarding the imposition of trawl gear restrictions on crab vessels with trawl capacity, Board authority stems from one of the oldest anti-crab prospecting restrictions in our regulations. Regulations 5 AAC 34.625 (c), 5 AAC 34.825(g) and 5AAC 34.925 (j)¹ all restrict vessels engaged in the taking or transporting of king crab from having on board an otter trawl with a head rope or foot rope longer than 60 feet. This regulation was put in place to stop prospecting with trawls during the boom years of king crab fishing. In the boom years, fishermen did not prospect preseason; instead, under the guise of bait fishing during the season, they used large trawls to prospect for high concentrations of crab to set their pots on. The Board restricted these vessels to a small otter trawl suitable for the harvest of bait, but of minimal value for prospecting. This regulation was in place prior to the imposition of the BSAI king and Tanner Crab FMP, was not challenged as provided for under the original FMP, and thus provided notice of the Board's authority to restrict groundfish gear from prospecting under the FMP.

5. Other Considerations

The Board questioned the department as to whether there was good justification to extend the preseason restriction from a 14-day to a 30-day period. Crab managers indicated that there was sufficient information to show that red king crab do not move all that much over a two week period. Industry representatives assured the Board that some of the vessels were in fact exploratory crab fishing under the auspices of cod fishing.

¹ 5 AAC 34.925 has been in place since at least October 1974, Register 51. 5 AAC 34.625 has been in effect since July 1979, Register 70. 5 AAC 34.825 took effect in July 1980, Register 74.

The Department of Law indicated that prospecting was a real enforcement problem. Law noted that prospecting is quite common, and that every year they seem to "find" several vessels, which are prospecting. Obviously, there is great advantage to being able to prospect, otherwise fishermen would not risk prosecution year after year.

D. Reconsideration by the Board

Because of industry concerns, the Board reconsidered Proposal 355 later during the meeting. The Board was asked to consider whether the 30-day preseason gear exclusion period should be the same for all fisheries. After much debate, the Board adopted the 30-day period for BSAI crab fisheries with small GHGs, and left the opilio fishery with its 14-day period. The opilio fishery has a large GHG, the season lasts for two to three months and thus does not elicit the same degree of fair start concern as fisheries that last a matter of days. But mostly, it was industry's operational concerns, and the CDQ groups who may want an early pre-season opilio harvest (but without exemptions from preseason gear restrictions and wanted uniform application) that felt the opilio preseason gear exclusion could be of shorter duration. The motion on reconsideration passed six in favor, zero against, one absent.

2. The Board complied with applicable FMP requirements and criteria.

The Board has treated the measure it took to restrict participation by those who operate gear in the preseason as an FMP Category 3-Other measure. With Category 3-Other measures, the Board is not limited to only the management measures expressly identified in the FMP, though the board must maintain consistency with the FMP goals and guidelines, National Standards and other applicable Federal law, and the Board must consult with the Council on such measure before implementation. To comply with the requirements of the FMP, the Board consulted with the North Pacific Fisheries Management Council at a joint meeting on July 27, 1999. The meeting took place before the regulation was filed or implemented. The regulation had been held in abeyance by the Department of Law at the Board's direction.

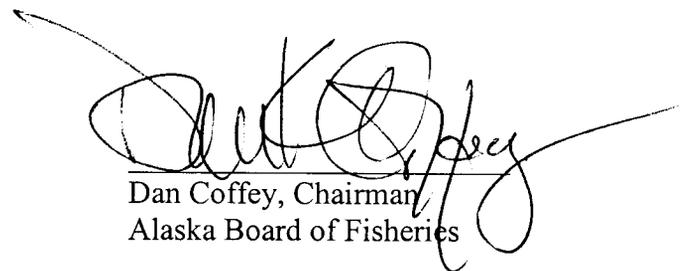
At the joint meeting, the Board listened carefully to comments for the Council and NMFS, explained the reasoning for its action. The Board heard information concerning Council action imposing sideboards on the activities of trawl vessels that cross over and fish the Bristol Bay red king crab fishery, but the Board also heard that those sideboards would not take effect until the 2000 season, at the earliest.

After the joint meeting, the Board scheduled another meeting at which it could vote to continue to keep the regulation on hold or to have it filed and implemented by Law. That meeting took place on August 6, 1999, where the Board voted to lift the hold on the regulation's implementation, but also committed to lift the restriction on trawl gear for the coming season if a federal regulation requires 100% observer coverage during the preseason gear exclusion period, at the suggestion of United Catcher Boats, an

organization largely made up of owners of vessels that participate in the trawl and crab fisheries. The Board also indicated its commitment to review this issue further during its 1999-2000 meeting cycle in coordination and consultation with the NPFMC.

On August 30, 1999, the Board met again and adopted an emergency regulation for the 1999 season to the effect that trawl vessels that had 100% federal observer coverage during the 30-day period prior to the Bristol Bay red king crab season would be allowed to participate in the king crab fishery.

ADOPTED: Oct. 29, 1999
Fairbanks, Alaska



Dan Coffey, Chairman
Alaska Board of Fisheries

VOTE: 6-0-1
one abstention

Alaska Board of Fisheries
Bering Sea/Aleutian Islands Crab Observer Oversight Task Force
99 - 186 - FB

APPOINTMENT

The Alaska Board of Fisheries made initial appointment of the Bering Sea/Aleutian Islands Crab Observer Oversight Task Force at the October 1999 work session. After initial appointment, task force members shall be appointed by the board at the king and Tanner crab meetings currently scheduled for 2002, 2005, 2008, 2011 and beyond.

TERM

Initial term for task force members shall be until 2002. Beginning in 2002, appointments shall be for a term of three years, corresponding to the board crab proposal cycle. Any vacancies will be appointed annually at the March meeting and the term will be for the remainder of the three-year cycle.

NUMBER OF TASK FORCE MEMBERS AND QUORUM

The task force will comprise 15 industry members. A quorum will be eight. The Board of Fisheries will attempt to achieve a broad representation, but specific appointments recognizing residency or size and class of vessels will not be required. If a vacancy occurs, a nomination shall be referred to the BOF for approval.

Understanding that the crab fisheries are conducted in a manner different than many other state managed fisheries, the board shall not consider representatives of stakeholders to be technical advisors, but shall recognize representatives as members of industry.

MEETING STRUCTURE

The task force will operate with a chair and vice-chair to be elected for a three-year term by the committee. Issues will be determined on a voting basis, with vote tallies to be reported to the board.

MEETING FREQUENCY

To be determined by the task force. The task force will coordinate meetings with the Alaska Department of Fish and Game. Attempts will be made to schedule meetings in conjunction with appropriate meetings of the Board of Fisheries and North Pacific Fishery Management Council.

FUNDING FOR TRAVEL

Task force members will be responsible for their own expenses to attend task force meetings.

TASK FORCE AUTHORITY

The task force shall exercise the following duties, authorities and responsibilities placed on it by the Board of Fisheries in regard to all aspects of the development, implementation, and continued operation of the BS/AI crab observer program.

- Report to and be advisory to the board
- Interact with and be advisory to the department

- Review and recommend specific action for all aspects of the BS/AI crab observer program, including:
 - a) Funding mechanisms for observer.
 - b) Budget and research priorities.
 - c) Types of observers to be used in the crab fisheries.
 - d) Issues of observer coverage, as well as duties and responsibilities of observers in the various fisheries.
 - e) ADF&G suggested program receipt requests.
 - f) Other issues that may arise.
- Review and provide recommendations to all appropriate entities regarding the amount and collection of cost recovery fisheries for the observer program in the BS/AI.

ANNUAL REPORTING AND RECOMMENDATION FORMAT

Prior to each March Board of Fisheries meeting, the task force shall receive a complete report from the Department of Fish and Game for the preceding year to include:

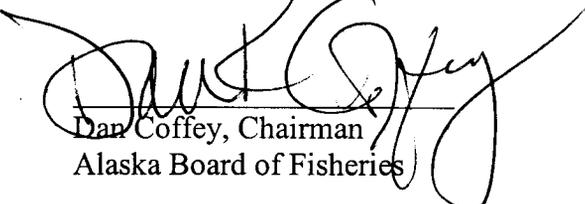
- Amount of funds collected in BS/AI crab cost recovery fisheries, along with an itemizing listing of fisheries from which funds were collected. Information shall include the names of vessels involved, pounds harvested, ex-vessel price, and other relevant information.
- A complete and detailed accounting on the use of funds collected in BS/AI recovery fisheries, including amounts utilized for observers, overhead and management, transportation, research, and all other associated costs.
- Complete observer data report for all fisheries with summaries and conclusions included.

Prior to each March Board of Fisheries meeting, the task force shall receive proposals from the Department of Fish and Game for the coming year to include:

- Proposed amount of funds for collection in BS/AI crab cost recovery programs
- Proposed budget for use of funds collected in BS/AI crab cost recovery programs.
- Anticipated levels of observer coverage in each specific fishery, as well as data specific goals for each fishery to be observed in the upcoming season.

Prior to the March Board of Fisheries meeting, the task force will review reports and proposals from the Department of Fish and Game and prepare written recommendations for the Board.

ADOPTED: 10/27, 1999
Fairbanks, Alaska


Dan Coffey, Chairman
Alaska Board of Fisheries

VOTE: 7/0

**ALASKA BOARD OF FISHERIES
POLICY ON WRITTEN FINDINGS FOR ADOPTION OF REGULATIONS
99 - 184 - BOF**

Generally, written findings explaining the reasons for the Board of Fisheries' regulatory actions governing Alaska's fisheries are not required by law. The Alaska Supreme Court has specifically held that decisional documents are not required where an agency exercises its rulemaking authority. *Tongass Sport Fishing Association v. State*, 866 P.2d 1314, 1319 (Alaska 1994). "Adoption of a decisional document requirement is unnecessary and would impose significant burdens upon the Board." *Id.* The Board recognizes, however, its responsibility to "clearly voice the grounds" upon which its regulations are based in discussions on the record during meetings so that its regulatory decisions reflect reasoned decision-making. *Id.* The Board also recognizes that there may be times when findings are appropriate to explain regulatory actions that do no result in adoption of a regulation.

Even though written findings are generally not a legal requirement, the Board recognizes that there are certain situations where findings are, in fact, legally required or advisable or where findings would be useful to the public, the Department of Fish and Game, or even the Board itself. The Board will, therefore, issue written findings explaining its reasons for regulatory actions in the following circumstances:

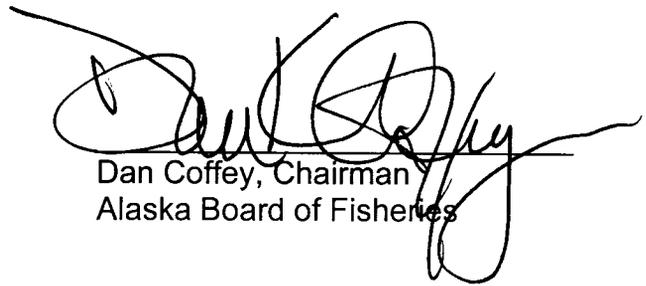
1. The Board will provide written explanations of the reasons for its decisions concerning management of crab fisheries that are governed by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs as required by that plan.
2. The Board will, in its discretion and in consultation with the Department of Law, provide written findings for regulatory decisions regarding issues that are either already the subject of litigation or are controversial enough that litigation is likely.
3. The Board will, in its discretion, provide written findings for regulatory actions where the issues are complex enough that findings may be useful to the public in understanding the regulation, to the department in interpreting and implementing the regulation, or to the Board in reviewing the regulation in the future.
4. The Board will, in its discretion, provide written findings for regulatory actions where its reasons for acting are otherwise likely to be misconstrued by the public, the legislature, or other state or federal agencies.

The chair will assign responsibility for drafting written findings to board committees, individual board members, department staff (with division director approval), or others, as appropriate for the circumstances.

Written findings must be approved by a majority of the full Board membership. Approval may be by a vote on the record at a Board meeting or by individual signatures of Board members upon circulation of a written finding. Only those Board members that participated in the regulatory decision will be eligible to vote on the findings for that regulatory decision. Board members are not required to vote for or against adoption of findings based on their individual vote on the underlying regulatory decision. A Board member who votes in favor of the regulatory decision may vote against adoption of the findings; a Board member who votes in opposition to a regulatory action may, nevertheless, vote for adoption of the written findings.

Written findings adopted by the Board will be numbered according to year and sequence of adoption. The executive director will maintain copies of all Board findings and make them available for review by the Board, department, and the public.

ADOPTED: 10/27, 1999
Fairbanks, Alaska



Dan Coffey, Chairman
Alaska Board of Fisheries

VOTE: 7/0

ALASKA BOARD OF FISHERIES

ALLOCATION CRITERIA

The Alaska Supreme Court recently issued a decision, Peninsula Marketing Association vs. State (Opinion No. 3754; dated September 20, 1991), regarding the application of the allocation criteria found in AS 16.05.251(e). The Court interpreted the statute to require the criteria to be considered when allocating between commercial fisheries as well as among the three user groups, commercial, personal use, and sport.

Consistent with the decision of the Court, the board finds that it will utilize the following specific allocation criteria when allocating between fisheries. Note that these criteria are essentially the same as the allocative criteria specified in AS 16.05.251(e), which the board has historically used as set out in 5AAC 39.205, 5AAC 77.007, and 5AAC 75.017.

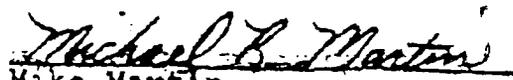
- 1) the history of each personal use, sport, and commercial fishery;
- 2) the characteristics and number of participants in the fisheries;
- 3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;
- 4) the availability of alternative fisheries resources;
- 5) the importance of each fishery to the economy of the state;
- 6) the importance of each fishery to the economy of the region and local area in which the fishery is located;
- 7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

Note that all seven (7) criteria do not necessarily apply in all allocation situations, and any particular criterion will be applied only where the board determines it is applicable.

Adopted: November 23, 1991

Vote: (Yes/No/Abstain/Absent) (5 / 0 / 0 / 2) [Absent: Robin Samuelson, Tom Elias]

Location: Anchorage International Airport Inn


Mike Martin
Chair
Alaska Board of Fisheries

ALASKA BOARD OF FISHERIES**ALLOCATION CRITERIA**

The Alaska Supreme Court recently issued a decision, Peninsula Marketing Association vs. State (Opinion No. 3754; dated September 20, 1991), regarding the application of the allocation criteria found in AS 16.05.251(e). The Court interpreted the statute to require the criteria to be considered when allocating between commercial fisheries as well as among the three user groups, commercial, personal use, and sport.

Consistent with the decision of the Court, the board finds that it will utilize the following specific allocation criteria when allocating between fisheries. Note that these criteria are essentially the same as the allocative criteria specified in AS 16.05.251(e), which the board has historically used as set out in 5AAC 39.205, 5AAC 77.007, and 5AAC 75.017.

- 1) the history of each personal use, sport, and commercial fishery;
- 2) the characteristics and number of participants in the fisheries;
- 3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;
- 4) the availability of alternative fisheries resources;
- 5) the importance of each fishery to the economy of the state;
- 6) the importance of each fishery to the economy of the region and local area in which the fishery is located;
- 7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

Note that all seven (7) criteria do not necessarily apply in all allocation situations, and any particular criterion will be applied only where the board determines it is applicable.

Adopted: November 23, 1991

Vote: (Yes/No/Abstain/Absent) (5/0/0/2) [Absent: Robin Samuelson, Tom Elias]

Location: Anchorage International Airport Inn



Mike Martin, Chairman
Alaska Board of Fisheries

ALASKA BOARD OF FISHERIES STANDING RULES

As a guide, the Alaska Board of Fisheries follows the most current version of Robert's Rules of Order in the conduct of the meetings [Note that the Alaska Statutes do not require the board to use any specific parliamentary procedure]. The board has by traditional agreement varied from the written Robert's Rules of Order. Below is a partial list of these variations (known as "Standing Rules") that the board follows:

- Take No Action. Has the effect of killing a proposal or issue upon adjournment. There are two reasons for taking no action: 1) It is found that the proposal is beyond the board's authority; or 2) due to board action on a previous proposal(s).
- Tabling has the effect of postponing indefinitely (Robert's Rules of Order). One of the primary reasons the board tables a proposal/issue is to gather more information during that meeting since a tabled proposal/issue dies when that meeting session adjourns.
- One amendment at a time. As a practice, the board discourages an amendment to an amendment. This is a proper motion by Robert's Rules of Order, however the board tries to avoid the practice because of the complexities of issues.
- Do not change or reverse the intent of a proposal/issue. For example, if a proposal's intent is to restrict a particular fishery and the board wishes to close or expand the fishery, the board will not amend the original proposal. The board will defeat, table or take no action on that proposal and then develop a board generated proposal to accomplish the action they feel is needed.
- "Ruling of the Chair" or "Chair's Ruling". When the chair makes a ruling, the board members have two options; 1) accept the ruling and move on; or 2) appeal/challenge the chair's ruling. By Robert's Rules of Order, the process is as follows (When a chair's decision is appealed/challenged):

By Robert's Rules of Order, the process is as follows (when a chair's decision is appeal/challenged):

- 1) The chair makes a ruling;
- 2) A member appeals (challenges) the chair's ruling (i.e. "I appeal the decision of the chair") and it is seconded (Note: All board members present can or could appeal/challenge the ruling);
- 3) Any board member can debate the ruling and appeal/challenge (Note: By Robert's Rules the chair and the person appealing/challenging the ruling are the only two who are to debate the issue);
- 4) The question before the board is: "Shall the decision of the chair be sustained?"
- 5) After the result of the vote is announced, business resumes.

- The public depends on or expects the board members to keep an open mind on the issues before the board. To accomplish this the board will listen to and ask questions: 1) staff reports, advisory committee and regional council reports, and 2) during deliberations on the issues, listen to fellow board members points and issues. It is not conducive to soliciting public involvement if the board members express that they already have an opinion and it is up to the public or staff to "change their mind."
- Note another "Standing Rule" contained in Board of Fisheries Finding Number: 80-78-FB. This finding is regarding the Reconsideration Policy of the board.

Adopted: November 23, 1991

Vote: (Yes/No/Absent/Abstain) 5/0/2/0/ [Absent: Robin Samuelson, Tom Elias]

Location: Anchorage International Airport Inn

Mike Martin, Chairman
Alaska Board of Fisheries

U:\BREG\91-2-FB.FND

ALASKA BOARD OF FISHERIES

Operating Procedures

Motion to Reconsider

1. Any member of the Board of Fisheries who voted on the original issue may move to reconsider a vote, regardless of how the member voted on the original issue.
2. A motion to reconsider may be made at any time prior to final adjournment of the Board meeting. A motion to reconsider need not be made on the day the original vote is taken.
3. A motion to reconsider must be supported by a presentation of new evidence that was not before the Board at the time the original vote was taken.
4. A Board member who intends to move for reconsideration should inform the Chairman of his intent.
5. When intent to reconsider is made known, public notice will be given as to when reconsideration will occur.

ADOPTED: April 3, 1980
VOTE: 6/0 (Goll absent)
Anchorage, Alaska