

MEMORANDUM

STATE OF ALASKA

Department of Law

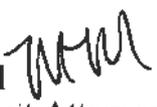
To: Glenn Haight
Executive Director
Alaska Board of Fisheries

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File No.:

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Subject: **Comments on Proposals for
2014 Board of Fisheries
Meeting on Statewide Crab and
Supplemental Issues**

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its March 17-21, 2014 meeting on regulations for statewide king and tanner crab fisheries and supplemental issues.

Background on NPFMC's Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. The Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands establishes a State/Federal cooperative management regime that defers crab management to the State of Alaska with Federal oversight. State regulations are subject to the provisions of the FMP, including its goals and objectives, the Magnuson-Stevens Act national standards, and other applicable federal laws. The FMP has been amended several times since its implementation, and the most recent revision is dated October 2011. The FMP is a framework plan, allowing for long-term management of the fishery without needing frequent amendments. The plan is more general than other FMPs, and establishes objectives and alternative solutions instead of selecting specific management measures.

The FMP defers much of the management of the BSAI crab fisheries to the State of Alaska using the following three categories of management measures. Category 1 measures are those that are fixed in the FMP and require a FMP amendment to change. Category 2 measures are framework-type measures that the state can change following criteria set out in the FMP. Category 3 measures are those that are neither rigidly specified nor frameworked in the FMP. Management measures in category 1 may be addressed through submission of a proposal to the North Pacific Fishery Management

Council (NPFMC). Management measures in categories 2 and 3 may be adopted under state laws subject to the appeals process provided for in the FMP.

Table 8-1 Management measures used to manage king and Tanner crabs in the BS/AI management unit by category

Category 1 (Fixed in FMP)	Category 2 (Frameworked in FMP)	Category 3 (Discretion of State)
Legal Gear	Minimum Size Limits	Reporting Requirements
Permit Requirements	Guideline Harvest Levels	Gear Placement and Removal
Federal Observer Requirements	In-season Adjustments	Gear Storage
Limited Access	Districts, Subdistricts and Sections	Vessel Tank Inspections
Norton Sound Superexclusive Reg.	Fishing Seasons	Gear Modifications
Essential Fish Habitat	Sex Restrictions	Bycatch Limits (in crab fisheries)
Habitat Areas of Particular Concern	Pot Limits	State Observer Requirements
	Registration Areas	Other
	Closed Waters	

The FMP’s description of management measures is not intended to limit the state to only these measures. However, implementation of other management measures not described in the FMP must be consistent with the FMP, the Magnuson-Stevens Act, and other applicable Federal law, and may occur only after consultation with the Council.

The Magnuson-Stevens Act national standards are:

1. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
2. Conservation and management measures shall be based upon the best scientific information available.
3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
4. Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen, (b) reasonably calculated to promote conservation, and (c) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
5. Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
6. Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

7. Conservation and management shall, where practicable, minimize costs and avoid unnecessary duplication.
8. Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.
9. Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.
10. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

Comments on Proposal 352: Proposal 352 would amend 5 AAC 34, article 11 (king crab fishery regulations for Area O, Aleutian Islands) to add a new section closing federal waters between 171 and 179 degrees west longitude to red king crab fishing when red king crab guideline harvest level (GHL) in state waters is less than 250,000 pounds. The proposer says the issue this will address is that vessel size limits and pot limits only apply in state waters in this portion of Area O and that if nothing is done the ability to manage a small GHL red king crab fishery between 171 and 179 degrees west longitude will be constrained given no limits outside state waters. The state-water fishery, which is not covered by the FMP, does not have to be consistent with FMP provisions. The state-water fishery would be open access, so no one would be excluded, although participants would all be subject to the same vessel size and pot number restrictions.

The closure of federal waters is a Category 2 Management Measure, and would have to be consistent with FMP 8.2.9 standards, which state, in pertinent part:

The State may designate new closed waters areas or expand or reduce existing State closed waters areas. In making such changes, the State shall consider appropriate factors to the extent data are available on: (1) the need to protect subsistence fisheries, (2) the need to protect critical habitat for target or non-target species, (3) the prevention of conflict between harvesting of species, and (4) the creation of navigational hazard.

These factors are not necessarily exclusive of what the Board may consider. If the Board adopts this proposal it should explain its rationale for closing federal waters.