

Charge for Southeast Alaska Beam Trawl Shrimp Task Force

Purpose: An advisory industry group to provide direction and assistance to ADF&G on commercial beam trawl shrimp management issues including:

1. Long-term management goals and plans
2. Research Plans
3. Stock Assessment and data collection
4. Management issues

The intent of this Task Force is to address commercial beam trawl shrimp fishery management issues and is not to be forum for allocation.

Task Force Structure: All beam trawl shrimp permit holders are welcome to attend and participate in the task force. The permit holders will elect a co-chair from industry and a vice co-chair to act as the liaison between industry and Dept. for development of issues, agendas to be discussed at task force meetings and co-chair the meeting with ADFG. The co-chair and vice co-chair once elected will remain until further replaced by a future election.

This charge corrects errors in RC 37 and is meant to replace it.

ALASKA BOARD OF FISHERIES

Southeastern Alaska and Yakutat King and Tanner Crab, Dungeness Crab, Shrimp, and
Miscellaneous Shellfish Meeting
January 15-21, 2012
Petersburg, Alaska

MISCELLANEOUS BUSINESS AGENDA

1. ACR and ADF&G Comments :
 - a. ACR 11 - Removing the Bristol Bay Red King Crab Minimum Total Allowable Catch (*Miscellaneous Tab*) – [Board]
2. Petition and ADF&G Comments on:
 - a. Yukon District 4 Commercial Chum Fishery (*Miscellaneous Tab*)
3. Discussion about creating a Sea Otter Industry Task Force – [Jensen]
4. Discussion about creating a Shrimp Beam Trawl Task Force – [Board]
5. Consideration of a new charge statement for the King and Tanner Crab Task Force - [Board]
6. Update on Joint Board Meeting preliminary work – [Kluberton and Smith]
7. Briefing on the *Yukon River King Salmon Management Plan* – [Smith]
8. Discussion to clarify Board Member's participation on conflicted proposals – [Board and Department of Law]
9. Letter to the Halibut Commission – [Board]

Submitted by Alaska Department of Fish and Game, Board Support Section



Karlberg & Associates PLLC
851 Coho Way, Suite 308
Bellingham, WA 98225
206-817-4202
ken@karlberglaw.com

January 14, 2012

VIA FACSIMILE (907-465-6094)

Monica Wellard
Executive Director
Alaska Board of Fisheries
Alaska Department of Fish and Game
Board Support Section
1255 W. 8th Street
P.O. Box 115526
Juneau, AK 99811-5526

Re: Agenda Change Request

Dear Ms. Wellard:

On behalf of my clients, Doug Karlberg and Gary Nelson, I submit the enclosed Emergency Petition to the Alaska Board of Fisheries.

I have not yet been retained to represent the City of Kaltag or to pursue equal protection/due process challenges to allocative issues raised in the explanation and detail underlying the Emergency Petition, but if the proposed emergency regulatory changes are not adopted for the upcoming chum harvest season, I anticipate from my discussions with City officials and Kaltag residents that I will ultimately be requested to represent a cross-section of affected parties. Their collective hope is that the proposed regulatory changes will be adopted.

My CV is enclosed. If you have any questions or require further information or clarification, please do not hesitate to contact me.

All the best.

Kenneth L. Karlberg

EMERGENCY PETITION TO ALASKA BOARD OF FISHERIES

I, Douglas Karlberg, pursuant to AS 44.62.220 and 5 AAC 96.625, hereby petition the Alaska Board of Fisheries for an emergency changes to 5 AAC 05.362, Yukon River Summer Chum Salmon Management Plan, for Yukon River subdistrict Y-4A.

The basis for this emergency petition is set forth below in the standard format for Agenda Change requests.

1) STATE IN DETAIL THE NATURE OF THE PROBLEM: The summer chum salmon stocks have rebounded in the middle Yukon area Y-4A, but the harvesting and processing season has been truncated dramatically by ADFG to protect Canadian-bound Chinook salmon. The impact of ADFG's action has fallen unfairly and disproportionately on the Yukon harvest area Y-4A, where Kaltag tribal members are highly dependent on the only operating salmon processing plant to support the local economy of Kaltag. Fishing is the economic backbone for these native communities. If the truncated 20 day processing season is not extended to its historical 38 day processing season, the processing plant is not commercially viable and will close permanently.

ADFG's justification for the truncated season is to delay the opening of the commercial chum fishery until after the Canadian-bound Chinook salmon are upstream. However, unlike other commercial fisheries in state and federal waters (e.g., Pollock fisheries), which are allocated by-catch of Chinook salmon and allowed to harvest, the Yukon harvest area Y-4A is completely closed during a highly critical chum harvest period without any by-catch allocation whatsoever. For reasons that are unclear, the equal protection and due process rights of Kaltag tribal members, in particular, and other similarly situated Alaskan Native communities on the Yukon with historical commercial fisheries, were simply not considered or weighed properly in the formulation of the federal and state fisheries management plans. As a consequence, the conservation burden of ADFG's action falls disproportionately on the Yukon harvest area Y-4A.

The allocation issue notwithstanding, the language of the proposed petition allows the Yukon chum harvest to be extended to its historical 38 day processing season by virtue that the proposed harvest technique, *i.e.*, fish wheels, eliminates by-catch issues by sending all Yukon Chinook's overboard alive. No by-catch allocation is necessary if harvesting is limited to approved fish wheels.

2) STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATE ABOVE:

- A) Fishery Conservation Purpose: If the language of the proposed petition is approved, set netting would be eliminated during the Chinook-sensitive early chum harvest period, and only approved fish wheels are allowed to be used to

harvest, which have been shown by scientific studies to have a mortality rate of less than .03 percent.

- B) **Correct An Error In Regulation:** The current regulation failed to properly consider and weigh the equal protection and due process rights of Kaltag tribal members, in particular, and other similarly situated Alaskan Native communities on the Yukon with historical commercial fisheries. In addition, the Yukon Summer Chum Management Plan was last updated in the 90's, and has not been revised/implemented in association with the Chinook Management Plan to address the legitimate concurrent needs of commercial and subsistence fisheries in the Yukon under the current scenario, where chum salmon returns are at historically high levels with over-escapement in many systems, and there is a dearth of Canadian-bound Chinook salmon.
- C) **Correct An Unforeseen Effect Of A Regulation:** Under the current regulations, no commercial summer chum salmon fishing is opened on the Yukon until subsistence fishing for Chinooks has begun upstream from Kaltag. The regulatory linkage of the two fisheries by ADFG does not appear to be clearly supported in any federal or state law, treaty or regulation. The net effect, however, is that commercial fishing for summer chum salmon does not open until over half the chum run has passed Kaltag. Two different species of salmon harvested by two radically different methods. One subsistence and the other commercial, but they are linked under the current management plans despite that harvest techniques, e.g., fish wheels, can adequately address ADFG's conservation concerns without the unintended commercial consequences.

3) STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT

PREDOMINANTLY ALLOCATIVE: The specific agenda change request is not predominately allocative in that the harvest guidelines and by-catch allocation for other commercial fisheries in federal and state waters would be unchanged if the proposed language of the petition is approved.

4) IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE:

The proposal is only secondarily allocative because if it is adopted, the proposal would provide fishers in the Y-4A area with the opportunity to harvest up to the current ADFG harvest guidelines, which would be nearly impossible with the current regulations and the truncated chum salmon season.

5) CITE THE REGULATIONS THAT WILL BE CHANGED IF THIS REQUEST IS HEARD:

Section added to 5 AAC 05.362. Yukon River Summer Chum Salmon Management Plan for commercial summer chums salmon harvesting during times of Chinook

conservation concerns in Yukon River Subdistrict Y-4A to include the following changes:

- a) Grant ADFG Emergency Order authority to restrict commercial chum salmon harvesting to fish wheels only in Sub-District Y-4A;
- b) Grant ADFG Emergency Order authority to require fish wheels in Sub-District Y-4A to have a live box or chute and all Chinook salmon must be returned to the water alive;
- c) Grant ADFG Emergency Order authority to require fish wheels in Sub-District Y-4A to be manned at all times to ensure that Chinook salmon are promptly returned to the water alive.
- d) Intent: Manage the summer chum salmon fishery based upon chum abundance only.
- e) Intent: Harvest during Chinook salmon conservation concerns is conditioned upon full compliance with subparts (a-c) above.
- f) Intent: Commercial harvesting of chum salmon under subparts (a-e) above shall be managed independently of subsistence fishing for Chinook salmon.

6) STATE IN DETAIL THE REASONS WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE: The processing plant in Kaltag will close permanently prior to the upcoming harvest season if the proposed changes are not approved.

7) STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST: I am one of the principals involved in the processing plant in Kaltag, and I have been requested by the Kaltag tribal members to represent their interests by seeking a solution to the truncated processing/harvest season.

8) STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE: No.

**AGENDA CHANGE REQUEST FORM
ALASKA BOARD OF FISHERIES**

The Board of Fisheries will accept an agenda change request only:

- 1) for a fishery conservation purpose or reason; or
- 2) to correct an error in regulation; or
- 3) to correct an effect on a fishery that was unforeseen when a regulation was adopted.

The board will not accept an agenda change request that is predominantly allocative in nature in the absence of new information found by the board to be compelling (5 AAC 39.999).

NAME: Douglas Kariberg c/o Kariberg & Associates PLLC

ADDRESS: 851 Coho Way, Suite 308 Bellingham WA 98225
City State Zip

TELEPHONE: (206) 817-4202

EMAIL ADDRESS: ken@kariberglaw.com
Day Evening

1) STATE IN DETAIL THE NATURE OF THE PROBLEM. Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues.

See attached addendum

2) STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED ABOVE. If any one or more of the three criteria set forth above is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason:

See attached addendum

or 2) Correct an error in regulation:

or 3) Correct an unforeseen effect of a regulation:

3) STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE.

See attached addendum

Alaska Board of Fisheries Agenda Change Request Form

4) IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE.

See attached addendum

5) CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD.

See attached addendum

6) STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE.

See attached addendum

7) STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user, sport fisherman, etc.).

See attached addendum

8) STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING.

See attached addendum

DATE: 1/11/12

SIGNATURE: Douglas Karlberg (by KIK
representing
authority)



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Bellingham, WA 98225
(206) 817-4202
(f) (360) 483-4581
ken@karlberglaw.com

SUMMARY OF FIRM EXPERIENCE

The firm's principal, Ken Karlberg, recently returned to his hometown of Bellingham for family reasons after 20+ years of legal experience with mid-to-large sized Seattle and Atlanta law firms, including as a litigation partner at Bogle & Gates PLLC, formerly one of the largest and foremost firms in the Pacific Northwest.

His litigation experience ranges from simple to complex commercial disputes, class actions (dealing with health care and employment benefits, securities, medical benefits, and damages to natural resources), product liability actions, employment disputes, catastrophic property losses involving construction defects, insurance subrogation and coverage claims, and personal injury defense.

Ken has served as trial counsel for and legal advisor to local, regional, national, and international clients engaged in the oil and gas, agricultural, chemical, electrical, manufacturing, construction, hotel, maritime, cruise line, and fishing industries. By virtue of Ken's diverse litigation experience, he is routinely consulted on business transactions, regulatory compliance, operational risks, and employment-related issues.

Ken has prevailed in over six jury and bench trials in just the past five (5) years, ranging from defense verdicts to awards in excess of \$3 million.

KEN KARLBERG**Education:**

- A.A., Foothill Junior College
 - American History
- A.B., Occidental College, Cum Laude, 1982
 - Double Major
 - History with Honors, Huntington Library Award
 - Thesis: "The Boldt Decision: Right or Wrong?"
 - Economics, Award of Distinction
 - Thesis: "Kemp/Roth and Supply Side Economics"
- Vanderbilt University School of Law (J.D., 1985)
 - Juvenile Law Clinic
 - Moot Court Board

Practice Emphasis:

Complex litigation in federal, state and administrative courts with emphasis in commercial, insurance, employment, and maritime disputes.

Admitted to Practice:

- Georgia State Bar Association, 1985-1989
- Washington State Bar Association, 1989 to present

Professional Activities:

- Member, Washington State Bar Association (1989-Present)
- Legal Advisor, Admiralty Moot Court Team, University of Washington School of Law (2003-4)
- Instructor, WDTL, Deposition Workshop (2001)
- Instructor, National Institute of Trial Advocacy (1995-7)
- Author, "AIDS and HIV: The Rights and Responsibilities of Maritime Employers" (1997)
- Former Guardian *ad Litem* Attorney (1990-1992)
- Adjunct Professor, Contracts, Conflicts of Law, Civil Procedure, Atlanta Law School (1987-89)

Community Service:

- President, Eastside FC (2007 to 2008)
- Board Member, Eastside FC (2005 to 2008)

- Managing Member, Preston Park LLC (2005 to 2008)
- Board Member, Eastside Youth Soccer Association (2007 to 2008)
- Girls Soccer and Basketball Coach/Fitness Trainer (1998-2005)
- Former Board Member, Seattle Fishermen's Memorial Committee (2001-2002)

Pre-Law Employment Experience:

- Farm Laborer in Dairy Industry (1971-75)
- Alaska Commercial Fisherman
 - Salmon Seine (Kodiak, AK 1976-1977)
 - Salmon Seine (Prince William Sound, AK 1978-1983)
 - Herring Gillnet (Norton Sound, AK 1990-1991)
- San Francisco Commercial Fisherman
 - Herring Gillnet (San Francisco Bay 1977)

REPRESENTATIVE MATTERS

Oil and Gas Industry

- *In re Exxon Valdez*: Trial counsel for Exxon in the Exxon Valdez Oil Spill litigation during the federal compensatory damages phase in Anchorage, AK in which the pre-trial demand exceeded \$900 million in diminished fishing profits and asset values; the net jury award of \$67 million failed to cover plaintiffs' attorneys' fees and expenses; chief strategist behind successful summary judgment motion that resulted in savings of an estimated \$250 million; led team of world-renowned experts in marine biology, chemical engineering, natural resources, and econometric regression analyses.
- Trial counsel for ARCO Marine in 20+ matters in federal court involving alleged operational, engineering and/or design defects in its tanker fleet; successfully procured defense verdicts in federal court in the only two matters to be tried.
- Assisted with permit application process for proposed Cross-Cascades pipeline for major pipeline company; responsible for analyzing and preparing testimony to be submitted to Washington's Energy Facility Site Evaluation Council regarding estimated spill frequency and volume and potential harm to environmentally sensitive areas and marine life.

Electrical Industry

- *Benton County PUD v. A.B. Chance/Washington Water Power v. Emerson Electric*: Represented major manufacturer of electrical products in product liability actions brought by eastern Washington PUDs in federal court for potential failure of distribution class insulators; settled at less than 25% of alleged damages; successfully argued motions to dismiss RICO claims and to limit damages under the Washington Product Liability Act.

Chemical Industry

- *Wainwright-North Slope School District v. ARCO Chemical*: Represented ARCO Chemical in \$3+ million product liability action in state court alleging that a major fire loss to Wainwright's school complex was caused by the defective flammability characteristics of ARCO Chemical's extruded polystyrene insulation; plaintiff voluntarily dismissed with prejudice after depositions were taken of its fire and chemical liability experts.

Health Care Industry

- Represented major health care organization in defense of federal and state class actions (\$30+ million at risk) alleging failure to provide medical benefits for naturopaths, massage therapists, and acupuncturists under the Every Category of Provider Act; successfully settled dispute without motions or formal discovery at one-tenth of the cost of earlier class actions against competitor health care providers.

Hotel Industry

- Obtained \$3.0 million judgment in two week jury trial against seller of franchised hotel for fraud, breach of representations and warranties, and conversion.

Professional Malpractice

- Successfully mediated malpractice action against CPA firm for in excess of \$200,000 without formal discovery; recovered 100% of losses while incurring less than \$15,000 in attorneys' fees.

Maritime/Cruise Line Industry

- *Bryant v. American Seafoods*: Defended class action against maritime vessel owners/employers in federal court alleging deliberate failure to provide mandatory medical benefits to seamen; successfully moved to dismiss lawsuit for lack of standing.
- *In re Hyundai Seattle*: Defended container ship owner in federal court action by cargo underwriters to recover \$15+ million in cargo lost overboard while the Hyundai Seattle was enroute from Pusan, Korea to Seattle; prepared and defended experts from around the world on the key issues of weather, navigation, stowage, welding, fuel, power-plant engineering and diesel electric engines; settled at mediation for 25% of alleged damages.
- Conducted due diligence in the \$650,000,000 acquisition of American Seafoods by a venture capital group, including review of American Seafoods' personal injury history and pending claims, insurance program, crew contracts, executive contracts, USCG, EEOC and OSHA complaints, fisheries endorsements, charters, vessel appraisals, maintenance records, and vessel lien history.
- Defended action in federal court by former East German trading organization against Switzerland-based fishing company involving maritime liens, challenges to legal title,

- improper asset registration, and fraud; conducted discovery and coordinated the preparation of experts in England, France, Mauritania, Cyprus, and Russia.
- Defended major provider of port security involving alleged violations of covenant not-to-compete and non-disclosure agreement, misappropriation of trade secrets, tortious interference with business expectancy, and civil conspiracy.
 - Defended 75+ seamen's personal injury actions on behalf of maritime employers/vessel owners in federal and state court; successfully procured defense verdicts in all matters that proceeded to trial.
 - Defended personal injury claims by passengers in federal court against major cruise line operators.

Construction Industry

- Successfully prosecuted \$2.0 million in claims by major cold storage company for property loss and loss of profits caused by design defects in insulated flooring system of regional warehouse; professional liability carrier for target engineering firm tendered full limits of malpractice coverage to settle.
- Represented start-up restaurant owner in claim for property damage and loss of profits caused by the multi-floor collapse of a brick façade from an adjacent high-rise building in high winds; established new law regarding successive-owner liability and statute of repose.
- Successfully prosecuted \$1.0 million in claims by plastic recycling center in state court for property loss and loss of profits caused by collapse of warehouse roofing system during rain storm.

Insurance Industry

- *Westmoreland v. Cincinnati Insurance Company*: Prosecuted bad faith claim against underwriter in federal court for refusal to pay insured losses, including for the death of 20+ dogs and cats boarded at client's kennel; jury awarded full limits of coverage and bad faith damages, including attorneys' fees and costs.
- Successfully defended against insurance claim by the Gambino crime family for property loss to night club caused by arson.
- Defended and prosecuted 40+ hull claims and coverage disputes for regional hull insurance pools.
- Prosecuted 20+ subrogation actions for Lloyd's of London Underwriters.

Agricultural Industry

- Prosecuted multi-million dollar property loss claim in federal court by regional grain facility caused by explosion of grain elevator during off-load operations.

Entertainment Industry

- Defended copyright infringement action against former rock group WAR; successfully obtained dismissal with prejudice.

EMERGENCY PETITION TO ALASKA BOARD OF FISHERIES

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ADFG's justification for the truncated season is to delay the opening of the commercial chum fishery until after the Canadian-bound Chinook salmon are upstream. However, unlike other commercial fisheries in state and federal waters (e.g., Pollock fisheries), which are allocated by-catch of Chinook salmon and allowed to harvest, the Yukon harvest area Y-4A is completely closed during a highly critical chum harvest period without any by-catch allocation whatsoever. For reasons that are unclear, the equal protection and due process rights of Kaltag tribal members, in particular, and other similarly situated Alaskan Native communities on the Yukon with historical commercial fisheries, were simply not considered or weighed properly in the formulation of the federal and state fisheries management plans. As a consequence, the conservation burden of ADFG's action falls disproportionately on the Yukon harvest area Y-4A.

The allocation issue notwithstanding, the language of the proposed petition allows the Yukon chum harvest to be extended to its historical 38 day processing season by virtue that the proposed harvest technique, *i.e.*, fish wheels, eliminates by-catch issues by sending all Yukon Chinook's overboard alive. No by-catch allocation is necessary if harvesting is limited to approved fish wheels.

2) STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATE ABOVE:

- A) Fishery Conservation Purpose: If the language of the proposed petition is approved, set netting would be eliminated during the Chinook-sensitive early chum harvest period, and only approved fish wheels are allowed to be used to

harvest, which have been shown by scientific studies to have a mortality rate of less than .03 percent.

- B) **Correct An Error In Regulation:** The current regulation failed to properly consider and weigh the equal protection and due process rights of Kaltag tribal members, in particular, and other similarly situated Alaskan Native communities on the Yukon with historical commercial fisheries. In addition, the Yukon Summer Chum Management Plan was last updated in the 90's, and has not been revised/implemented in association with the Chinook Management Plan to address the legitimate concurrent needs of commercial and subsistence fisheries in the Yukon under the current scenario, where chum salmon returns are at historically high levels with over-escapement in many systems, and there is a dearth of Canadian-bound Chinook salmon.
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3) STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT

PREDOMINANTLY ALLOCATIVE: The specific agenda change request is not predominately allocative in that the harvest guidelines and by-catch allocation for other commercial fisheries in federal and state waters would be unchanged if the proposed language of the petition is approved.

4) IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE:

The proposal is only secondarily allocative because if it is adopted, the proposal would provide fishers in the Y-4A area with the opportunity to harvest up to the current ADFG harvest guidelines, which would be nearly impossible with the current regulations and the truncated chum salmon season.

5) CITE THE REGULATIONS THAT WILL BE CHANGED IF THIS REQUEST IS HEARD:

Section added to 5 AAC 05.362. Yukon River Summer Chum Salmon Management Plan for commercial summer chums salmon harvesting during times of Chinook

conservation concerns in Yukon River Subdistrict Y-4A to include the following changes:

- a) Grant ADFG Emergency Order authority to restrict commercial chum salmon harvesting to fish wheels only in Sub-District Y-4A;
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6) STATE IN DETAIL THE REASONS WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE: The processing plant in Kaltag will close permanently prior to the upcoming harvest season if the proposed changes are not approved.

7) STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST: I am one of the principals involved in the processing plant in Kaltag, and I have been requested by the Kaltag tribal members to represent their interests by seeking a solution to the truncated processing/harvest season.

8) STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE: No.

RC 46

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

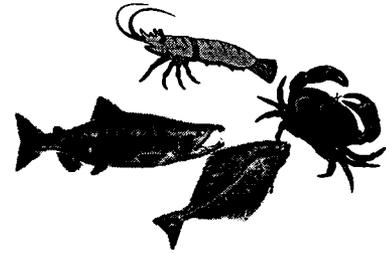
Juneau, AK 99801

Phone: 907-586-6652

Email: seafa@gci.net

Fax: 907-523-1168

Website: <http://www.seafa.org>



January 18, 2012

Dear Board of Fish Members,

RE: Proposal #166

The Fishermen would like the Board of Fish to consider the following suggested closed areas to meet the Kasaan subsistence needs for proposal #166 to re-open Districts 1 & 2 for the summer and fall Dungeness crab season. Proposal #166 suggested the need to close an area for subsistence use by Kasaan residents but did not define any suggested areas. **The Fishermen recommend closing Skowl Arm and a portion of Karta Bay for the Organized Village of Kasaan resident needs during the summer season and reopen the two closed areas in the fall** as occurs in Whales Pass. The Karta Bay closure is to reduce conflicts between commercial Dungeness crab fishing and traditional subsistence harvest of salmon in this location as raised during the committee process. In order to truly protect the subsistence fishery and resident fishermen, any area closed to commercial fishing should also be closed to sport. Since Kasaan is concerned about sufficient opportunity to meet subsistence needs and subsistence is a State priority use, with a sport-fishing lodge located directly in Skowl Bay and many other lodges and sport-fishing businesses located on Prince of Wales Island we are recommending this area be closed to sport fishing (also subject of proposal #146) in the summer (June 15th to August 15th) as well as to commercial Dungeness crab fishing.

We would like to direct your attention to some documents submitted this cycle pertaining to this issue. **RC 2 page 76 contains a map of currently closed areas** for commercial Dungeness crab fishing in District 2. **RC 39** contains information about Kasaan Harvest and use of Crab **including a map showing the District 2 C&T Shellfish area**. The Ketchikan AC did vote against this proposal in **AC #7**. **PC 9** was submitted by a commercial fisherman who fished the summer opening in District 2 in 2009/10 season and the winter fishery the following two years. He addresses the condition of the crab he has harvested and as stated in the committee that the late winter portion of the season is one of the times when soft-shell crab are found in District 2. **PC 5** submitted by the Office of Subsistence.

On page 12 & 13 of the Opposition to motion for Preliminary Relief *Kasaan v State* No 1KE – 09-307 CI (A copy of this Board of Fish lawsuit response would likely be available from Dept of Law.) “The Regional Supervisor for ADF&G’s commercial fisheries division stated that despite ADF&G concerns and wishes to avoid a summer season, the current regulations with a summer season for the rest of Southeast Alaska had resulted in record harvests, and that the Board had “chosen for valid in my mind, economic reasons to weigh all of the information that the department has on the biology of the species to adopt the existing management plan and the fishing seasons [including summer seasons], and that has manifested itself in the harvest that we have see[n].”¹ The lawsuit filing went on to say, “Districts 1 and 2 are the only areas in Southeast Alaska where there has been no commercial summer season for Dungeness crab. The new regulation will open Districts 1 and 2 to the same kind of commercial fishing that has been taking place for years in the rest of the management area. The sport, subsistence, and personal use fisheries have long been open during the summer in Districts 1 and 2.”² No one has argued that the timing of these fisheries present a conservation threat to the crab stocks there. *Indeed, plaintiff has conceded that June is the time to start harvesting Dungeness crab (emphasis added)*.”³ The Plaintiff (The Organized Village of Kasaan) in their 2009 complaint stated on page 10, “Historically, the people of Kasaan do not harvest crab until June because the crab in January through May are starved and starting to molt. The only feasible way to maintain their customary and traditional use is in the early summer. The Kasaan people harvest in small skiffs and along shore at low tides, which is not practical during the winter when many of the harvest areas are iced or inclement conditions prevent use of skiffs or shore harvest.” A commercial crab fisherman also cannot harvest crab in a bay that is iced over.

¹ Exhibit C, Transcript at 16.

² 5 AAC 02.005 (subsistence fishing at any time of year); 5 AAC 47.020(11) (sport fishing for Dungeness crab open year-round); 5 AAC 77.662(1) (no closed season for personal use Dungeness crab fishing).

³ Plaintiff’s Exhibit 6.

The harvest from District 2 for the 2009/10 season totaled 116,964 pounds (RC 4) well within the historical range of harvest shown in Table 2.2 in *Fishery Management Report No. 11-62, 2012 Report to the Board of Fisheries on Southeast Alaska/Yakutat Dungeness Crab Fisheries*, which varied within the range of a low harvest in 2005/06 of 63,768 pounds to a high of 138,147 pounds in the 2007/08 season. The following season in a winter only fishery, 85,338 pounds were harvested by the commercial Dungeness crab fishery which was the third highest harvest in the last eight years, between 2004/05 to 2010/11.

In fact the United States Department of the Interior, U.S. Fish and Wildlife Service, Office of Subsistence Management in **PC #5** wrote that "working with other management agencies, does not believe adoption of any of these proposals would affect Federal Subsistence users and fisheries in this area."

Steps in Reviewing a Proposal with Subsistence Implications*:

- District 2 already has a designated C&T finding.
- The next step is to determine that there is a harvestable surplus which there obviously is since the preliminary estimate of a commercial harvest for the Dungeness commercial fishery is 75,343 pounds in the ongoing fishery for the 2011/12 season.
- The Board next needs to determine the amount necessary for subsistence (ANS) In **RC 39** on pages 2 & 4 the 1987 & 1998 surveys showed an approximate use of 23 pounds of crab per capita and the 2010 Census showed Kasaan population as 49 (internet search) 10 more residents than shown in the 2000 census. Crab is one of the top subsistence food sources for Kasaan residents immediately following deer. In staff comments at the 2010 Statewide March meeting on proposal #195 it states that, "Although it is difficult to determine what portion [of crab] comes from District 2, the Division of Subsistence estimated consumption of Dungeness crab in the community of Kasaan in 1998 to be roughly 1000 pounds harvested, with 85.7% of households surveyed participating in subsistence use of Dungeness crab.
- With a possible ANS finding of 1,000 to 2,500 pounds of crab (*20 to 51 pounds per person*) and a commercial harvest in District 2 of at least 75,000 pounds plus personal use, sport and subsistence harvest in the district, a reasonable opportunity exists for subsistence needs and other users to co-exist within the district and still provide for a commercial fishery.

*Steps When Considering Subsistence Uses & Proposals that Affect Subsistence Uses (Under Subsistence Procedures Tab in Binder page 16)

Suggested Regulatory Language:

5 AAC 32.110 FISHING SEASONS FOR REGISTRATION AREA A. In

registration Area A, male Dungeness crab may be taken or possessed only as follows:

(1) in Section 13-B, except the waters of the Sitka Sound Special Use Area described in 5 AAC 32.150(10), [AND BEGINNING FEBRUARY 29, 2012 IN DISTRICTS 1 AND 2], except the waters of Whale Passage, Skowl Arm and Karta Bay described in (2) of this section, from 12:00 noon October 1 through 11:59 p.m. February 28;

(2) in the waters of Section 13-B that are in the Sitka Sound Special Use Area described in 5 AAC 32.150 (10), and in the waters of Whale Passage north and west of a line extending from 56° 05.65' N. lat., 133° 07.30' W. long. To 56° 05.85' N lat., 133° 06.40' W. long., and in the waters of Skowl Arm west of Kasaan Point located at 132° 16.89' W. longitude, and in the waters of Karta Bay west of a line that begins at Mound Point at 55° 34.52 'N. latitude, 132°33.95' W. longitude to a point at 55° 34.08' N. latitude, 132°33.98' W. longitude from 12:00 noon October 1 through 11:59 p.m. November 30;

(3) in all other waters of Registration Area A, from 12:00 noon June 15 through 11:59 p.m. August 15 and from 12:00 noon October 1 through 11:59 p.m. November 30.

5 AAC 47.021. Special Provisions for seasons, bag, possession, and size limits, and methods and means for the salt waters of Southeast Alaska Area

(i) Prince of Wales Island Vicinity

(3) Dungeness crab may not be taken in the waters of Skowl Arm west of Kasaan Point located at 132° 16.89' W. longitude, and in the waters of Karta Bay west of a line that begins at Mound Point at 55° 34.52 'N. latitude, 132°33.95' W. longitude to a point at 55° 34.08' N. latitude, 132°33.98' W. longitude

Summary:

SEAFAs preferred option is for a summer and fall commercial Dungeness fishery in District 1 & 2 with Skowl Bay and a portion of Karta Bay closed in the summer commercial Dungeness crab fishery and the sport fishery in addition to the closed waters for the commercial fishery currently in regulation instead of a fall/winter fishery. SEAFAs alternative option if more area than suggested in the regulatory language above is necessary to provide for reasonable opportunity to meet Kasaan subsistence needs, we recommend District 1 open for the summer and fall season and District 2 closed in the summer and open for the winter season only.

Sincerely,

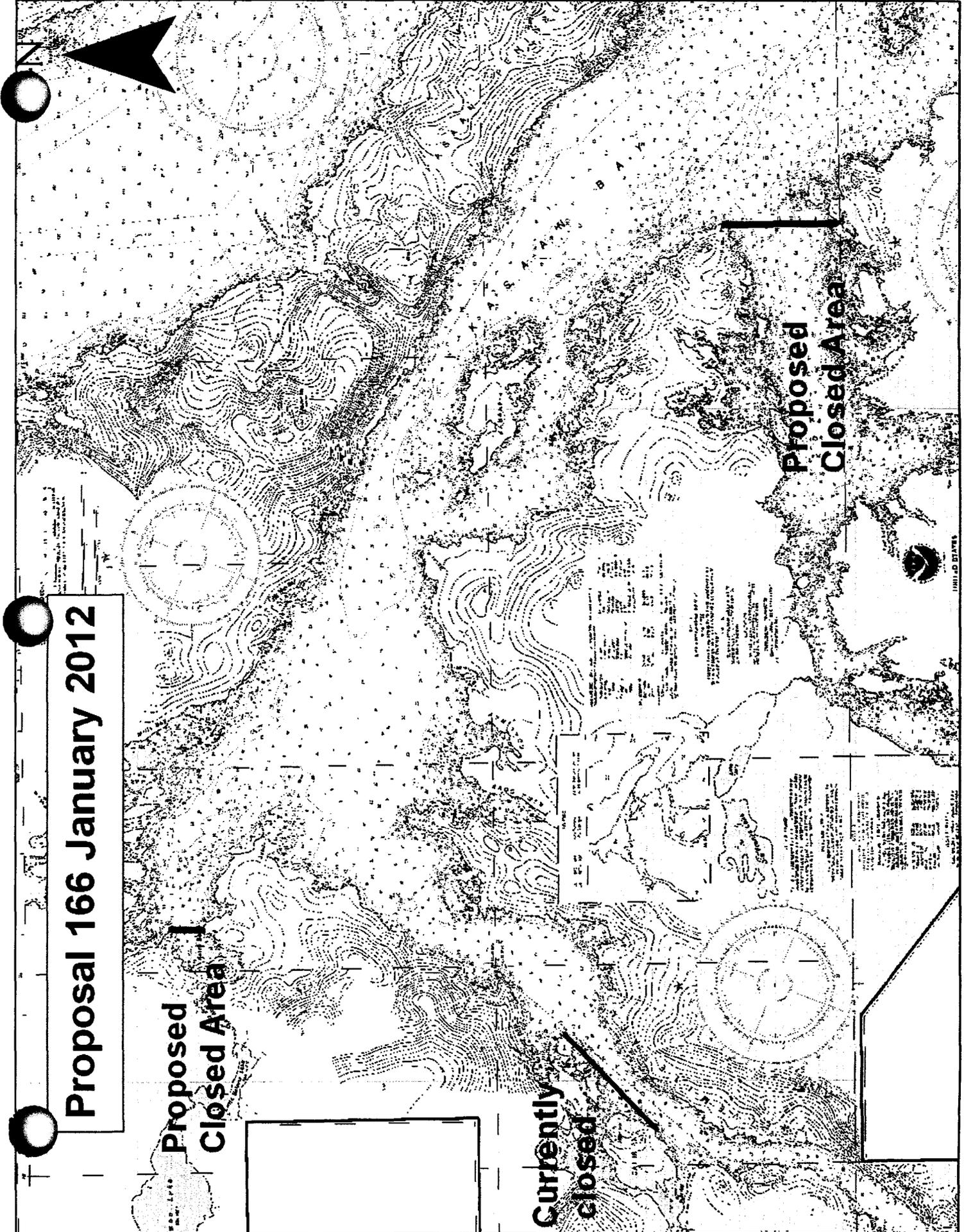


Proposal 166 January 2012

Proposed
Closed Area

Currently
closed

Proposed
Closed Area



Proposal 166 January 2012

1. This chart is based on the following information:
On soundings
On charts
On maps
On plans
On photographs
On other sources

2. The soundings are in fathoms
3. The depths are in fathoms
4. The depths are in fathoms

5. The soundings are in fathoms
6. The depths are in fathoms
7. The depths are in fathoms

8. LIGHTS
9. See Note on High Water

10. CHARTS
11. by the National Ocean Service, Coast
12. and Geodetic Survey, and the
13. Corps of Engineers, Geological

14. CAUTION
15. See Note on defects in aids to
16. navigation on this chart. See
17. Note.

18. REMARKS
19. This chart is based on the
20. following information:
21. On soundings
22. On charts
23. On maps
24. On plans
25. On photographs
26. On other sources

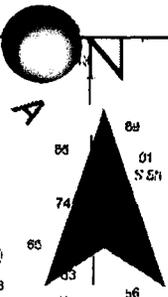
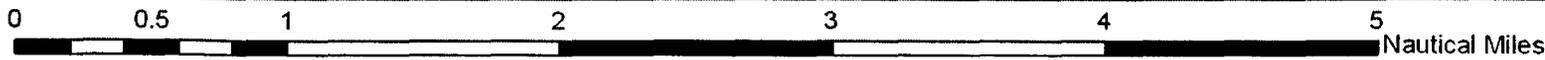
27. ADDITIONAL INFORMATION
28. See Note on important
29. information.



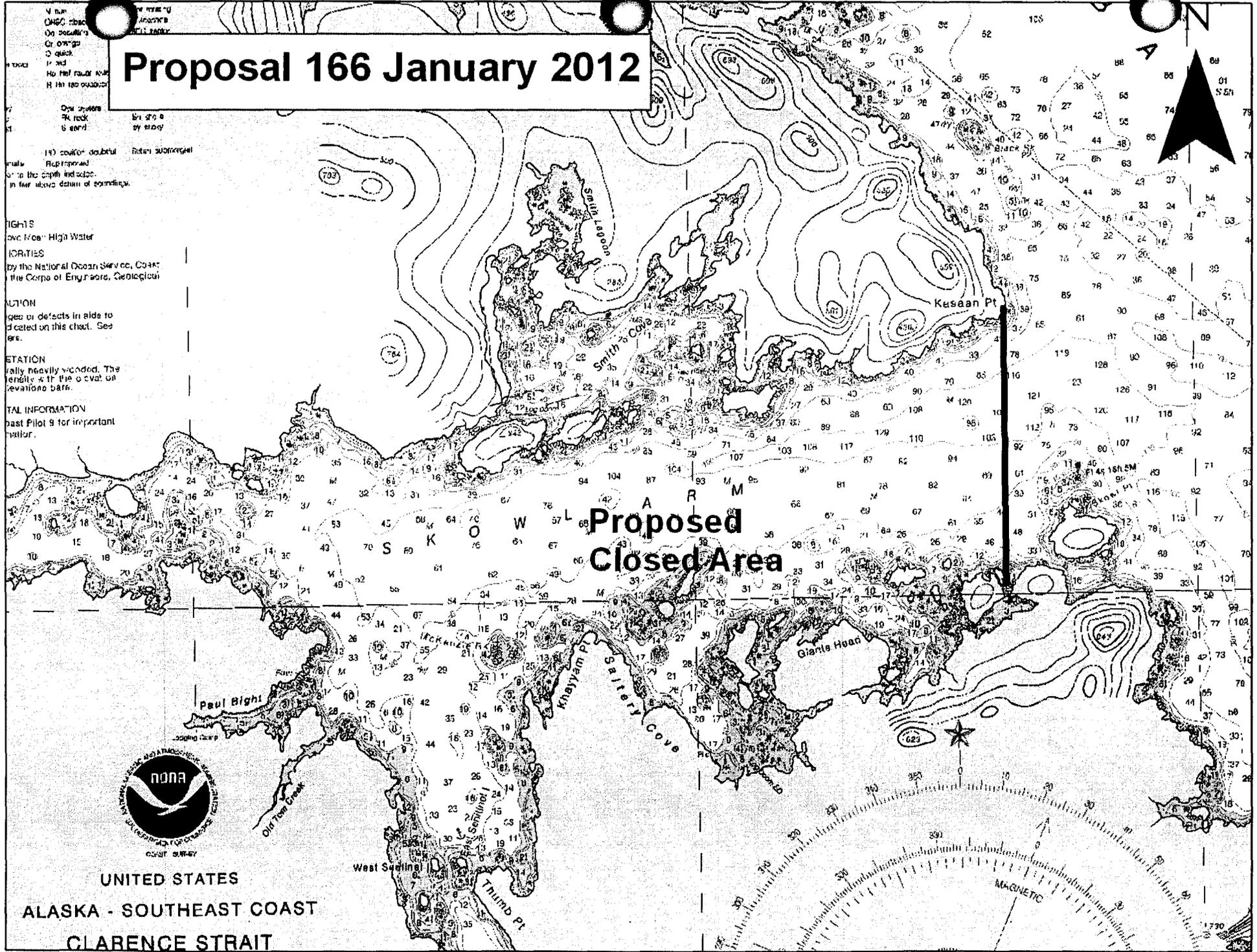
UNITED STATES

ALASKA - SOUTHEAST COAST

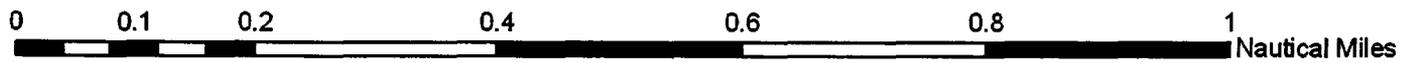
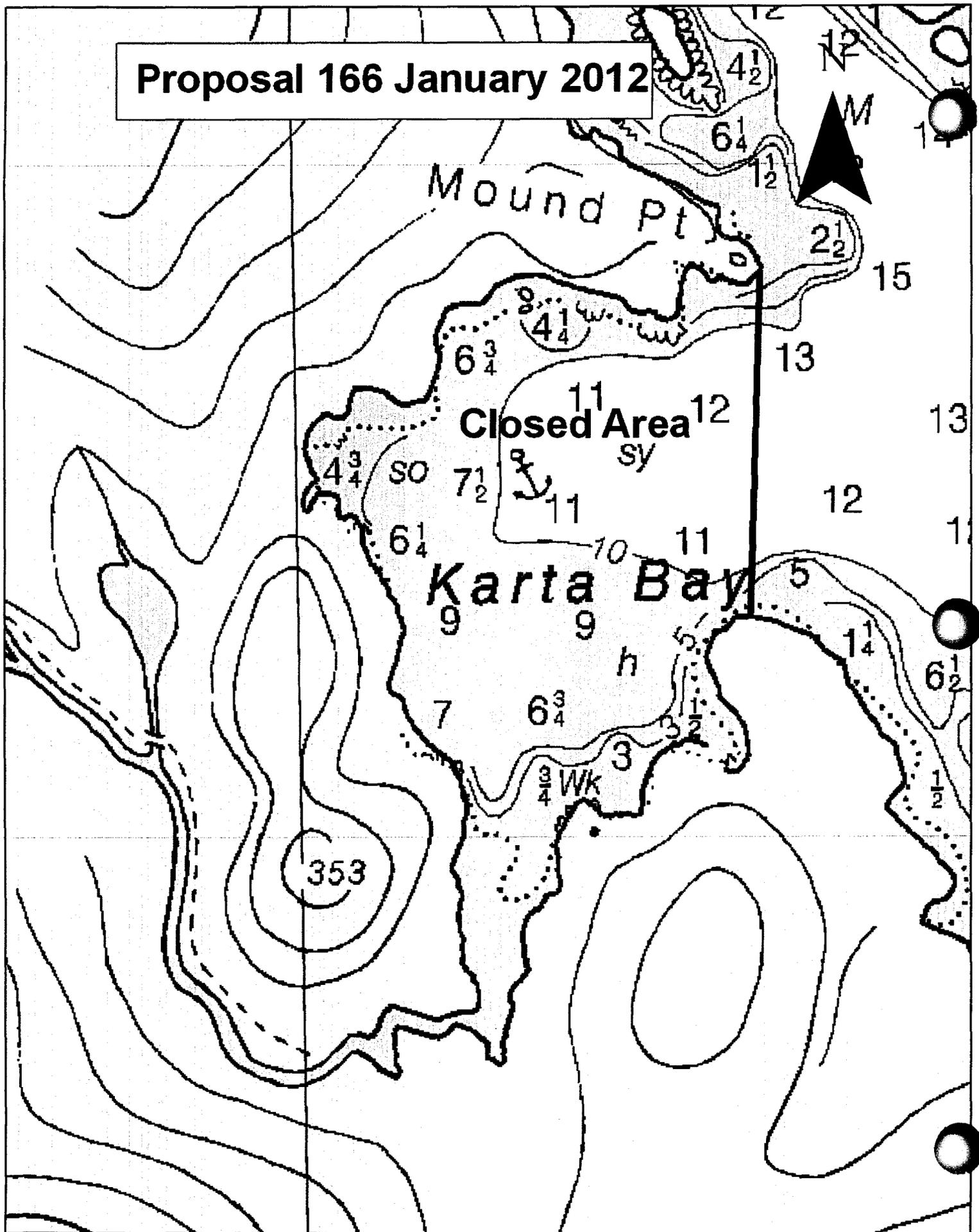
CLARENCE STRAIT



Proposed Closed Area



Proposal 166 January 2012



RC47

ALASKA BOARD OF FISHERIES

Charge to the Alaska Department of Fish and Game
and Southeast Alaska King and Tanner Crab Task Force

The Alaska Board of Fisheries requests the Alaska Department of Fish and Game and the Southeast Alaska King and Tanner Crab Task Force to work together collaboratively for the following purposes.

The King and Tanner Crab Task Force is an advisory industry group that meets annually with ADF&G to exchange information (or perhaps interface) on commercial SE AK King crab and tanner crab management including:

1. Research plans and designs,
2. Stock Assessment and survey design (timing, methodology etc),
3. Data Collection (logbooks, sampling etc.)
4. Management issues of mutual concern (e.g. inseason communication, transparency, factors considered in establishing GHLS)
5. Long term management plans and goals.

Additionally, the KTF (King and Tanner Task Force) and ADF&G will work together toward achieving consensus (to the extent possible) on king and tanner management proposals for the Board of Fish.

The King and Tanner crab fisheries and associated regulations should be compatible with a vision for the sustainable management of the Southeast Alaska Crab fisheries, outlined as follows:

1. Abundance based management by area with preseason GHLS, incorporating information about all stock segments;
2. Survey and stock assessment protocols in place that are understood by stakeholders;
3. In-season management targeting specific area GHLS;
4. Follow the policies set out in the board's King and Tanner Crab Policy
5. Maintain the concurrent tanner and golden king crab fisheries.