

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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August 17, 2009

Mr. Doug Mecum, Acting Administrator
Alaska Region, National Marine Fisheries Service
National Oceanic and Atmospheric Administration
P.O. Box 21668
Juneau, Alaska 99802

Dear Mr. Mecum:

We have reviewed your letter and its Attachment A, outlining the consequence and requirements for Eastern Bering Sea (EBS) snow crab 2009/2010 total allowable catch (TAC) setting under two scenarios that could result from analysis of the 2009 EBS trawl survey: 1) the EBS snow crab stock is estimated to have been above B_{MSY} on 15 February 2009; and 2) the EBS snow crab stock is estimated to have been below B_{MSY} on 15 February 2009.

Attachment A of your letter provides guidance to the Alaska Department of Fish and Game (ADF&G) and provides criteria for what constitutes compliance with the federal requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and fishery management plan (FMP) under the first scenario.

If it becomes apparent that the first scenario will guide the 2009/2010 TAC setting process, ADF&G will seek confirmation of our understanding of that guidance and seek resolution of any outstanding questions related to the first scenario at that time. As noted in your letter, the stock was predicted to be below B_{MSY} on 15 February 2009, based on data available through the summer 2008 survey; hence we will focus here on the second scenario.

Your letter states that under the second scenario, "NMFS would immediately notify the Council if the rebuilding plan has failed to make adequate progress towards rebuilding the stock within the ten year period" (Attachment A, page 4). We request this notification be provided shortly after the Crab Plan Team meeting, no later than 21 September 2009.

During the interim period between notification of the rebuilding plan's failure and the final approval of a new rebuilding plan prepared by the Council as an FMP amendment, it appears from our reading of the MSA (16 U.S.C. 1855(c)) that NMFS has the authority and responsibility to determine the need for and to promulgate emergency regulations or interim measures and to specify how the provisions of the law 16 U.S.C. 1854(e)(4) will be applied in establishment of the EBS snow crab 2009/2010 TAC (see also 16 U.S.C. 1854(e)(6) and 16 U.S.C. 1854(e)(7)(B)).

With that understanding, ADF&G seeks confirmation that, if the second scenario occurs, the following process would be in compliance with federal requirements:

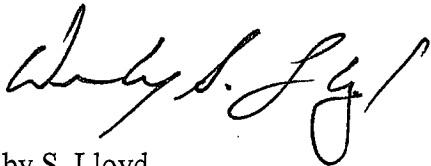
ADF&G will follow the guidance provided in the letter and Attachment A by applying 50 C.F.R. § 600.310(j)(3)(ii) as a "default harvest strategy" for 2009/2010. ADF&G would set the 2009/2010 TAC according to the usual process and on the normal schedule (i.e., between the end of the September CPT meeting and 1 October) without any further review or guidance from the SSC in October 2009.

Specifically, the overfishing rate would be estimated as usual by the EBS snow crab assessment model (as reviewed by and with the recommendations of the CPT in May 2009 and the SSC in June 2009); that estimate will be presented to and reviewed by the CPT at the September 2009 meeting. The retained-catch portion of the total fishing mortality (biomass) resulting from application of 75 percent of the overfishing rate would provide ADF&G with a maximum for determining the 2009/2010 TAC. ADF&G would set the TAC below that maximum if the calculated TAC according to 5 AAC 35.517 is less than that maximum or if ADF&G finds it necessary to reduce the TAC following the normal considerations of 5 AAC 35.517(c) and the Alaska Board of Fisheries' Policy on King and Tanner Crab Resource Management Goals and Benefits.

We presume the default harvest strategy developed for use in the interim period strikes the appropriate balance necessary to achieve compliance with federal requirements to rebuild the stock in a time that is as short as possible, while taking into account the needs of the fishing communities and other factors specified in the MSA.

If NMFS decides that a more conservative harvest strategy is required to comply with provisions of the MSA, beyond the default harvest strategy (50 C.F.R. § 600.310(j)(3)(ii)), we seek confirmation that NMFS will notify ADF&G with specification of the additionally required measures by 21 September 2009 to allow us to implement those in time for our TAC setting deadline of 1 October. In this event, we request that the measures be clear, specific, well-defined, and operationally usable for determining the 2009/2010 TAC.

Sincerely,



Denby S. Lloyd
Commissioner