

Amendment 52 to the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

1. In Chapter 11, Section 14.3, Use of Data, delete text marked in ~~strikeout~~:

~~Data will be supplied to NMFS, Council staff, and any other authorized users according to statutory and regulatory data confidentiality requirements in a blind and unaggregated form. The blind format is intended to safeguard information that is perceived to be highly proprietary and prevent analysts from directly identifying the source of any observations. Specifically, all identifiers associated with a data submitter are eliminated and replaced with a unique number, which does not reveal the identity of the submitter. However, in cases where the data (including identifiers) are requested by NMFS Enforcement, NOAA General Counsel, the Department of Justice, or the Federal Trade Commission for a purpose connected to law enforcement or qualification for quota and other Federal permits, PSMFC will continue to provide the data and the identity of the submitter.~~

2. In Chapter 11, Section 14.7 Enforcement of the Data Requirements, delete text marked in ~~strikeout~~ and add text marked in **bold**:

The intent of Amendment 42 for the wording of what was (F) Enforcement of Data Requirements is unclear. The FMP amendment may or may not have retained the following text under paragraph 14.7: This analysis assumes the following text is included in the FMP and the highlighted text would be revised or deleted as needed under the components and options of this action.

The Council endorses the approach to enforcing the data requirements developed by the staff and the Data Collection Committee, as set out on page 3.17-20 in the February, 2003 document entitled “BSAI Crab Rationalization Program, Trailing Amendments”, which provides:

Anticipated Enforcement of the Data Collection Program The analysts anticipate that enforcement of the data collection program will be different from enforcement programs used to ensure that accurate landings are reported. It is critical that landings data are reported in an accurate and timely manner, especially under an IFQ system, to properly monitor catch and remaining quota. However, because it is unlikely that the economic data will be used for in-season management, it is anticipated that persons submitting the data will have an opportunity to correct omissions and errors³⁷ before any enforcement action would be taken. Giving the person submitting data a chance to correct problems is considered important because of the complexities associated with generating these data. Only if the agency and the person submitting the data cannot reach a solution would the **NMFS Office of Law Enforcement enforcement agency**³⁸ be contacted. The intent of this program is to ensure that accurate data are collected without being overly burdensome on industry for unintended errors.

A discussion of ~~four~~ **three** scenarios will be presented to reflect the analysts understanding of how the enforcement program would function. The ~~four~~ **three** scenarios are 1) a case where no information is provided on a survey; 2) a case where partial information is provided; **and** 3) a case where the agency has questions regarding the accuracy of the data that has been submitted; ~~and 4) a case where a random “audit” to verify the data does not agree with data submitted in the survey.~~

In the first case, the person required to fill out the survey does not do so. In the second case, the person fills out some of the requested information, but the survey is incomplete. Under either case that person would be contacted by the agency collecting the data and asked to fulfill their obligation to provide the required information. If the problem is resolved and the requested data are provided, no other action would be taken. If that person does not comply with the request, the collecting agency would notify enforcement that the person is not complying with the requirement to provide the data. Enforcement would then use their discretion regarding the best method to achieve compliance. Those methods would likely include fines or loss of quota and could include criminal prosecution.

In the third case the person fills out all of the requested information, but the agency collecting the data, or the analysts using the data, have questions regarding some of the information provided. For example, this may occur when information provided by one company is much different than that provided by similar companies. These data would only be called into question when obvious differences are encountered. Should these cases arise, the agency collecting the data would request that the person providing the data double check the information. Any reporting errors could be corrected at that time. ~~If the person submitting the data indicates that the data are accurate and the agency still has questions regarding the data, that firm's data could be "audited". It is anticipated that the review of data would be conducted by an accounting firm selected jointly by the agency and members of industry.~~ Only when that firm refuses to comply with the collecting agencies attempts to verify the accuracy of the data would enforcement be contacted. Once contacted, enforcement would once again use their discretion on how to achieve compliance.

~~The fourth case would result when the "audit"³⁹ reports different information than the survey. The "audit" procedure being contemplated is a verification protocol similar to that which was envisioned for use in the pollock data collection program developed by NMFS and PSMFC. During the design of this process, input from certified public accountants was solicited in order to develop a verification process that is less costly and cumbersome than a typical "audit" procedure. That protocol involves using an accounting firm, agreed upon by the agency and industry, to conduct a random review of certain elements of the data provided.⁴⁰~~

~~Since some of the information requested in the surveys may not be maintained by companies and must be calculated, it is possible that differences between the "audited" data from financial statements and survey data may arise. In that case the person filling out the survey would be asked to show how their numbers were derived.⁴¹ If their explanation resolves the problem, there would be no further action needed. If questions remained, the agency would continue to work with the providers of the data. Only when an impasse is reached would enforcement be called upon to resolve the issue. It is hoped that this system would help to prevent abuse of the verification and enforcement authority.~~

In summary, members of the crab industry will be contacted and given the opportunity to explain and/or correct any problems with the data, that are not willful and intentional attempts to mislead, before enforcement actions are taken. Agency staff does not view enforcement of this program as they would a quota monitoring program. Because these data are not being collected in "real" time, there is the opportunity to resolve occasional problems as part of the data collection system. Development of a program that collects the best information possible to conduct analyses of the crab rationalization program, minimizes the burden on industry, and minimizes the need for enforcement actions are the goals of the data collection initiative.

3. In Chapter 11, the footnotes to Section 14.7 Enforcement of the Data Requirements, delete text marked in strikethrough:

³⁷ The intent of the program is to have enforcement actions triggered by the willful and intentional submission of incorrect data or noncompliance with the requirements to submit data.

³⁸ ~~The term enforcement agency in this case may or may not include the RAM Division and the Office of Administrative Appeals (in addition to NMFS Enforcement). Those details are still under discussion within NOAA.~~

³⁹ ~~This “audit” could be the result of either the random review process that is contemplated or an “audit” triggered under scenario three.~~

⁴⁰ ~~However, in cases of non-compliance in which enforcement has to be notified, the data verification process is likely be more comprehensive.~~

⁴¹ ~~Any time a number must be derived, the survey will provide direction on how to calculate the information requested. This direction should help minimize differences. However, when discrepancies do arise, the firm will be given an opportunity to show how they derived their figures, and correct the information if necessary.~~