


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: December 2, 1997

SUBJECT: Groundfish/Crab License Limitation Program

ESTIMATED TIME 3 HOURS

ACTION REQUIRED

- (a) Treatment of vessels foreign owned on June 17, 1995.
- (b) Timing of EGOA trawl closure and reallocation of trawl sablefish set-aside.

BACKGROUND

Two issues related to the license limitation program (LLP) have recently come to our attention which require consideration by the Council. The first is a loophole in the proposed LLP regulations that may allow foreign-owned vessels to come back into the fishery. The second is the disposition of the five percent sablefish TAC in the Southeast Outside Gulf of Alaska that will no longer be needed as bycatch for trawlers once the license limitation program is implemented in 1999.

(a) Qualification of foreign-owned vessels

The Council's final motion for LLP contained a provision that licenses would be issued to vessel owners as of June 17, 1995, and further that such owners must be eligible to document a fishing vessel under Chapter 121, Title 46, U.S. Code. This language is reflected in the plan amendments upon which the Secretary of Commerce based the September 12, 1997 approval of the LLP. The intent of this language was to prevent LLP qualification, regardless of catch history, by vessels which were foreign-owned at the time of the Council's LLP approval (June 17, 1995). While the Council was advised by NOAA GC and Coast Guard representatives that they could not prevent qualification, and re-entry into North Pacific fisheries, by U.S. -owned vessels operating overseas, it was understood that foreign-owned vessels could be precluded from LLP qualification. Related excerpts from the transcript of the June 1995 and April 1996 discussions on this issue are in item C-2(a)(1).

While the Plan Amendment language appears to be consistent with Council intent, it has come to our attention that the proposed regulations allow for a vessel's catch history to be transferred, and if the recipient of that catch history could have legally documented a vessel as of June 17, 1995, they could be granted a license and endorsements which were earned by a vessel which was foreign-owned on June 17, 1995. The net effect would be to circumvent the intent of the license recipient provisions of the program by allowing this capacity back into the fisheries. Item C-2(a)(2) contains the 'Definitions' section of the proposed rule, specifically the definitions of 'eligible applicant' and 'qualified person', which allow this potential loophole.

While the Council recognized that transfers prior to June 17, 1995 (if strictly documented through a notarized contract) would be honored, their intent appeared to be to draw a line at the June 17 date and disallow such

transfers of catch history relative to this situation (see April 1996 transcripts). A possible solution would be to say that transfers would be recognized, *except those that occurred after June 17, 1995, and where the owner on June 17, 1995 was unable to document a vessel under Chapter 121, Title 46, U.S. Code.* This might properly convey the Council's intent and would close the potential loophole by not allowing this capacity to be 'transferred' back into the fisheries.

Though the formal comment period on the proposed regulations has passed, this may be an issue of extreme concern to Council members and the regulations should be clarified prior to publication as a Final Rule. The Council has the opportunity now to state its position, and to initiate an amendment if necessary to fix this potential loophole.

(b) Southeast trawl closure

A second set of issues relates to the trawl quota for sablefish in Area 650, Southeast Outside District of the Eastern Gulf of Alaska. Five percent of the sablefish TACs in West Yakutat (140-147 W) and Southeast Outside (east of 140 W) has been set aside for trawler bycatch since amendment 14 was implemented in 1985. The trawl set-aside in Southeast Outside amounted to 247 mt in 1996 and 192 mt in 1997. If the Council adopts the plan team's 1998 recommended ABC for its TAC, then the five-percent set aside would be 183.5 mt. At a longline exvessel price of about \$1.94 per pound (from PacFIN for 1996), this amounts to roughly \$785,000.

There are two issues that require Council consideration. The first has to do with the timing of the SEO closure to trawling. The second is what to do with the unused trawl sablefish quota once the closure occurs. Turning first to the timing issue, NMFS has stated that it is possible to implement the LLP-related trawl closure east of 140 W in 1998, a year ahead of the LLP program slated for 1999. It appears to me, however, after having reviewed the record of Council discussions on LLP, that the closure is tightly bound with the use of endorsements and the whole LLP system. It was acted upon as option 9000 under license designations at our June 1995 meeting, specifically: "In the Eastern Gulf (EY + SO), an additional designation allowing the use of legal fixed gear only will be assigned, regardless of the gear used to qualify for the endorsement." Therefore, I believe that NMFS would need further guidance from the Council to move ahead with the trawl closure one year ahead of the LLP.

Whenever the eastern Gulf is finally closed to trawling, the second issue arises of how to dispose of the five-percent trawl set-aside. I have heard various suggestions that include: (1) somehow transferring the set-aside from SEO to West Yakutat so it is still available to trawlers; (2) adding it to the existing IFQ fishery; (3) earmarking it as bycatch or IFQs for trawlers who decide to use their SEO endorsement with fixed gear; and (4) giving it as IFQs to displaced trawlers to be sold as compensation for lost fishing opportunities.

Just about anything may be possible, but I believe the record argues against the last alternative, i.e. using it as compensation. It is clear from discussion in June 1995, that the Council intended to compensate trawlers for lost opportunities resulting from the SEO trawl ban. However, they intended that this compensation would come in terms of an eventual ITQ system for groundfish, and the species for which they would be compensated were Pacific cod, pollock, POP, flatfish, rockfish, i.e., groundfish species other than sablefish. I can find no mention of compensation for sablefish. Sablefish has been a bycatch species for trawlers in Southeast ever since Amendment 14 was passed in May 1985. In all the written testimony from LLP decisions in June 1995, and in Council transcripts, there was never any mention of sablefish compensation for lost opportunities in the eastern Gulf (C-2(b)(1)).

In any case, it appears that the next step is to start an amendment to dispose of the five percent trawl set aside in Southeast Outside. The Council needs to determine which alternatives should be examined. The amendment would have to be extremely fast-tracked to be in place for 1998, but could go on a normal cycle of initial review in April, final in June, if the closure is implemented with the LLP in 1999.

[Excerpted from transcripts of Council discussion in License Limitation Program, June 1995]

Capt. Anderson: I've got an issue that lurking out there that I think needs to be addressed for clarification or discussion, and it applies to groundfish and crab, maybe more so on the crab side because there are a number of vessels in the last year or so that have been reflagged foreign, perhaps Russian, British Honduran, whatever, operating in the Russian zone. Therefore, there are going to be a number of vessels which will have accumulated a catch history which gives them a general qualification and then qualification with endorsements. In some cases the current owner may in fact still be qualified to document or re-document the vessel in the United States with the United States documentation and still convert back and get a fishery endorsement. In other cases perhaps that vessel has been sold to a foreign corporation; I have no way of knowing that, but that, quote, current owner may in fact not as of today be eligible to document a vessel in the U.S. fisheries. So you may have a situation where the vessel carries its catch history with it and the qualification for certain licenses but in certain cases the current owner may not be eligible to receive the license and I think it may be appropriate to clarify what we mean here by current owner. Perhaps it could be a current owner who is in fact a person eligible to document a vessel in accordance with the U.S. documentation laws as the transfer provision reads; another item that would come into question is if the current owner is not qualified, then would the, in some point in time, the first qualified owner, 'cause you could have a U.S. person or corporation subsequently purchase that vessel and then try and bring it into the fishery, it could qualify to be documented with a fishery endorsement--would that person then be eligible to receive the license qualifications that were with that vessel at one time. I don't necessarily have answers, but those are some of the items that are out there hanging around that I think people need to be aware of.

Lauber: Interesting point. Mr. Benton?

Benton: I think I understand the issue that Capt. Anderson is raising, but let me see if I've got this correct. A vessel that is a U.S. hull, so that there is no conflict with the Anti-Reflagging Act, right?

Anderson: I didn't even get into that, but yeah, if it's a U.S. hull, it can be brought in and documented U.S. and receive a fisheries endorsement. If it's a foreign hull, it's covered under the Anti-Reflagged, and so named and listed, it could also, the same thing could be done.

Benton: A vessel that meets those requirements then fished during the moratorium qualifying period so it qualifies for a general license under the provisions, leaves U.S. waters, is documented under the Russian flag, for example, returns to U.S. waters and meets the endorsement qualifying period for an area endorsement under groundfish, O.K?, so it's got its general license and its area endorsement now, is that the instance that we are being concerned with?

Anderson: I'm not concerned about back and forth and when he did it; I'm just saying that if you had a vessel which meets the general requirements and the endorsement requirements and currently is reflagged Russian, the current owner may or may not, depending on how the corporation was played, may not qualify to receive a license, or may . . . [several people talking at once; can't understand]. . . Well, if we just said current owner, I mean maybe the foreign corporation could in fact receive the license if the only criteria you had was current owner and then he'd sell the license 'cause he couldn't use it.

Benton: So there are a number of instances that we know of where a number of vessels have left the Alaska fisheries and gone to operate in Russia, have reflagged as Russian vessels, and the concern that we might have in that regard is that they would return and lead to increased capitalization which we're trying to stop, right?

Anderson: Well, I won't say "right" with that; you can categorize it that way of what we're trying to do. I'm just trying to present the facts about what vessels may be eligible to come back in. These are also vessels that have accumulated and qualified like any other vessels that we've got here, it's just that their current status is a little different.

Tillion: We're hoping that we picked the years that don't bring them back.

Benton: Well, there's some. . .you don't reach them with years. . .Oh, Counselor, I really don't want to get into foreign ownership arguments again.

Lauber: We don't have to take this up at this moment; we can go on. I'm not going to pin anybody down, do you want to keep moving through these things and then maybe come back and revisit this?

Tillion: Well, let's not come back to revisit; let's move through.

Benton: Well, this one has come to my attention and I have a thought on this. Maybe I'll put this out as a thought instead of as a motion, but we might, under license recipients, in order to put a hole in what might be a loophole which could result in a fairly sizeable number of vessels getting back in the fisheries, put some kind of a restraint on that which would be that to the extent permitted by law the owner of a vessel which is operating under a foreign flag or a vessel that's been sold to a foreign owner and operated in foreign waters as of the date of final Council action would not receive a license or endorsements. And I put the caveat in front of that, to the extent permitted by law, because I've obviously run into this one several times.

Tillion: I'm not interested in the one who took the chance and went over under some joint venture agreement and is still flying the American flag. The ones that have left United States ownership and are flagged from the others I'm willing to address; the person that went over for part of his season and then came back again, I'm not necessarily. . .as long as he kept the U.S. flag on, no problem.

Benton: We're not talking about those; we're talking about the ones that either sold to a foreign partner and documented under a foreign flag or were otherwise documented under a foreign flag.

Tillion: Well, I think that that's a separate issue that we can pose.

Lauber: Do you want to move on, or do you want to work it through?

Benton: I'm looking at Counselor, actually, to see if I get a reaction of what I said.

Lindeman: I don't have an answer right now. We could look at this. I need some time to look at it.

Benton: Counselor, does it help a little bit if we put in front of this, "to the extent permitted by law"? That would allow you the flexibility of saying, 'well, yeah, it's permitted or not it's not permitted by law.'

Tillion: Current owners legally capable of documenting a United States vessel might be what you. . .

Lindeman: Mr. Chairman, that's what it is now. A person who's. . .

Tillion: No, no. We give it to current owners, whether they're legally able to document the vessel or not. You could add. . .

Lindeman: No, Mr. Chairman, it goes to persons defined as eligible to document a fishery vessel.

Anderson: That's the language under transfers. You may want to clarify that current owners would carry the same language with it, because I think we all assume that under current owners that we're talking about the guy who's got a U.S. flagged vessel and if he's a current owner, he would have had to be qualified to document under U.S. laws. But, we've got a lot of these others that are lurking out here and I don't think it's inappropriate for the Council to say current owners would have the same qualification to receive a license as one who was getting a license transferred to them.

Pereyra: Capt. Anderson, when a vessel documents under a Russian flag, or document their vessel, do they have to surrender their U.S. documentation?

Anderson: Yes.

Pereyra: So, why couldn't we just have it be at the time of the Council final approval, hopefully it'll be today, vessels have to be documented under U.S. law or it doesn't count.

Anderson: Well, I don't think we want to tie the Council's action to the vessel; I think you want to tie it to the owner because that vessel, whether it can participate in the United States fishery or not is going to be tied strictly to the documentation laws, not an action that the Council takes, so whether we like it or not, that vessel will be able to come back in and be documented and participate in the fisheries in the United States with a fishery endorsement, no matter what we do here today.

Pereyra: But he wouldn't meet the requirements that we've placed in terms of what vessels are eligible and which are not. I mean, we do the same things with landing requirements, why can't we just state that a vessel . . .

Anderson: We wouldn't be able to prohibit that vessel from participating in the fisheries. We may be able to tie to the owner and prevent that owner from being qualified under a license limitation program to participate with that vessel.

Tillion: Current owners, if at the time of passage were legally able to document under United States law, would that do it?

Pereyra: Anybody can do that.

Tillion: I think that I'd much prefer to bring this up a little later when I can maybe talk to one of our State attorneys and Lisa.

Benton: Let me try this, Mr. Chairman. I would move we amend License Recipients to include "current owners," and add a second provision that would read, "and to the extent permitted by law, the owner of a vessel which is operating under a foreign flag as of the date of final Council action shall not receive a general license or area and species endorsements for the fishing activities of that vessel."

Tillion: I'll second it.

Benton: Want me to repeat that, Counselor? O.K. . . .to the extent permitted by law, the owner of a vessel which is operating under a foreign flag as of the date of final Council action shall not receive a general license or area and species endorsements for the fishing activities of that vessel.

Tillion: That doesn't mean, then, that the vessel could not come back into Alaska and buy an endorsement after he was transferred back, but it would have lost the endorsement it would have had before it went. . .

Lauber/Benton: That's correct.

Anderson: The only thing I'd say, I think that a better way of wording it may achieve the same result would be that whether the owner of the vessel at the time of Council action, whether that owner would in fact be qualified to document a vessel under the laws of the United States, as opposed to whether that vessel is foreign-flagged at the time. Again, you have to get it away from the flag of the vessel and tie it to the owner.

Tillion: There's one loophole in that. The Russians allow 49% ownership. Can a person with a 49% ownership in a vessel document it under United States law and claim what came . . . , so if you really want to do it you have to say "is legally documented under United States law at the time of passage," wouldn't you?

Pereyra: Certainly, there are certain grandfathered vessels that could be 100% foreign owned if they meet the U.S. control requirements, so . . .

Benton: That's different, that's why I tied it to operating under a foreign flag as of the date of final Council action.

Anderson: I'll try to rephrase it one more way, I don't know, to document a vessel in Russia, I don't know whether you need to be a Russian corporation or whether you can still be a U.S. corporation. You could still be a corporation and have a Russian-flagged vessel, then in fact that U.S. corporation may be perfectly legal in its ability to redocument that vessel in the United States. And that's my point and the difference that was in Mr. Benton's motion, what if it's a Russian corporation, then it would not be able to document that vessel unless it restructured.

Lauber: Could someone explain why it would not be adequate to use the same definition as we used with . . . Dave Hanson just handed me this language, suggested current owners who are persons defined as those eligible to document a fishing vessel under Chapter 121, Title 46 U.S.C. as of June 16, 1995. Does that do it?

Anderson: I think that's a good shot, Mr. Chairman. I think that's pretty close to the best we can do.

Lauber: I'll read that again. Current owners who are persons defined as those eligible to document a fishing vessel under Chapter 121, Title 46 U.S.C., as of June 16, 1995.

Pereyra: I don't have my statutes with me, but is Chapter 121 the 75% rule?

Anderson: No. The language that's under the transfer section is what's been mirrored here and that's the appropriate language.

Pereyra: But, what's the percentage of U.S. citizen ownership required under Chapter 121?

Anderson: Under fishery documentation it's not 75%; that's for coastwise trade; it's 50%, then you have other vessels that are grandfathered in.

Pereyra: But, are the grandfathered vessels covered under that; I happen to be somewhat sensitive on that particular issue.

Anderson: I'm not sure; I believe so, but I can't be sure. I don't know.

Pereyra: Without some definition on that particular issue I can't vote for this.

Tillion: Well, we're using the same definition that we've already worked out for the transfer of ownership, right? [yes] The one that requires that you be legally able to document a vessel and if the current owner is able to legally document a vessel, they're out.

Pereyra: That's different; that's entirely different. What we're saying is we're putting different standards on vessels that we want to transfer to rather than those that get initial ownership and we have a very detailed memo from General Counsel saying that unless we include the grandfathered vessels in there, they can't do it.

Lindeman: Does the Council just want to say what it wants to do, and we'll go look at it?

Benton: I think that's a good idea.

Lauber: O.K., what do we want to do, Mr. Benton.

Benton: Counselor, let's see if I can get this straight. What we want to do is, to the extent that we can, prohibit vessels that have reflagged into Russian waters, well primarily into Russian waters I believe, they've reflagged, they've left the fishery, and they would otherwise meet the landings criteria or general licenses and endorsements, but they've left the fishery, they've reflagged and documented under a foreign flag, but they might return into the fishery. What we'd like to do is, is those vessels have left, prohibit them from acquiring a license. And, Counselor, the reason we want to do that is 'cause they represent a significant amount of capacity that could return to the fisheries, a fairly sizeable number of catcher processors in the crab fleet, for one, as I understand it.

Tillion: They're doing very well and most of them won't want to come back.

Lauber: O.K., is that good enough?

→ Benton: I'll withdraw my motion.

Tillion: Let's roll.

Lauber: And, was there any objection to that language being submitted and Counselor see what they can do? The motion was withdrawn and that, of course, takes care of Dr. Pereyra's problems with any grandfathered vessels that the United States Congress gave extraordinary privileges, created a little loophole they drove the English navy through. O.K., we'll move along then, to License Designation. Anyone have any comments?

Next Day:

Capt. Anderson: We discussed this yesterday under groundfish, but the same language that causes a problem is now listed under the most recent documents under both crab and groundfish. It discusses current owners of vessels documented in the United States as of 6/15/95. I know we didn't reach resolution on that issue yesterday, there were a lot of different ideas floating around and I think that what the staff was trying to capture is what they heard yesterday, but I don't think it was the best resolution and I have a motion, I'd like to change the initial language. And, my motion would be to redefine that first sentence, both under groundfish and crab, to be: license recipients would be current owners defined as those persons eligible to document a fishery vessel under Chapter 121, Title 46 U.S.C. If I can get a second I'll speak to it. [Seconded by Samuelson]

Lauber: And that's as of June 16. . .

Anderson: No, sir, I did not add the particular date in there; I'll address that also. What we could have in this case, I suppose there's about probably 40 vessels that may have been reflagged Russian, they may or may not still be U.S. corporations that own those vessels, I don't know that. But, the language that's in the existing document would in fact prohibit perhaps a fully-qualified U.S. corporation which happens to be flying a Russian flag on its vessel from the opportunity to reflag that vessel U.S. It is probably no different from any other vessel that may have a landings history that has just been participating in another area of the country in a U.S. fishery. The documentation laws allow these [owners?] to these vessels to return to U.S. documentation and reacquire their fishery endorsement and the language I proposed would keep that consistency between the documentation laws and the Magnuson Act. By putting a date certain in there I think you may run into. . . I'd defer maybe to NOAA General Counsel, but you may run into some other problems with Administrative Procedures Act of allowing a proper notice of that opportunity to reflag U.S., and you may be better off looking at those vessels and defining current owners without a date for now because if we put a date certain in there, the other problem you run into is U.S. vessels currently, you're going to tie this license to whoever happens to be the owner as of today when you've got a program that may not be in effect until three years from now, so I don't know how that would compound problems with future transactions and owners, so I think I would leave the date out for now. With that, I'll allow any other discussion.

→ Lauber: O.K., it's been moved and seconded; it basically was the same language I read yesterday, "current owners who are persons defined as those eligible to document a fishing vessel under Chapter 121, Chapter 46 U.S.C." Is there any further discussion? Is there any objection to the motion of Capt. Anderson that I just read? Hearing none, it passes. Is there anything else under that, License Recipients? O.K., License Designations. O.K., Qualifying Period.

Council Discussion
License Limitation - Initial Issuance of Licence/Foreign Ownership
April 20-21, 1996

Behnken: Could we go back to the one that Capt Anderson brought up because I'm not sure we have that one clear, or I don't anyway. And, that's under "General Provisions. Licenses may be transferred only to persons eligible to document a fishery vessel under Title 45 U.S.C., Chapter 121," and then there's this question about U.S. ownership requirements and U.S. ownership opportunity and I didn't understand quite the point . . . [end of tape]

[tape changeover - evidently there was no "carryover" and portion of discussion lost]

Captain Anderson: . . . "for purposes of initial issuance of a license, a qualified person must have owned the vessel on June 17, 1995" -- that's the one sentence that jumped out at me. What I had remembered in Dutch Harbor was that the person, a person, must have owned the rights to the catch history of that vessel on June 17, 1995. In other words, there may have been a vessel that had a catch history, it was reflagged, and I don't know what the arrangements might have been, but that owner may have retained that catch history and those fishing rights. And therefore, upon initial issuance of a license, if that person then subsequently owns that vessel they would qualify to receive that license like anyone else. And, I know you're going like that [evidently referring to some physical response such as a nod], but I believe that that's the way it was openly discussed in Dutch Harbor.

Tillion: If they went to Russia, they can stay in Russia.

Lauber: As I recall we didn't like it then and I don't know that we like it more now.

Anderson: I know we don't like it, Mr. Chairman, but I think that was the wording that was . . . most appropriate.

Tillion: Thought we had a hell of a fight over this. I mean, the thing is you take your vessel and sell it to the Ruskies (sp. ?) and put their flag on it, it's gone. We don't want it back.

Pereyra: But I thought there was some provision that said that the initial issuance would go to the vessel at the time of issuance and that subsequent to that, then it could be traded, it would be severable. Wasn't that correct? Well, if that's the case, then how. . . and the person no longer has the vessel . . . how do they meet that initial provision?

Anderson: I would agree that they wouldn't be able to. . . I mean they would own the catch history and at the time they would have a license issued they wouldn't have a vessel to go with it; they wouldn't get it, I agree. But, I mean there's a lot of time that transpires between June 17, 1995 and the time in the future when they're going to get a license issued and if they subsequently bought that vessel back, repurchased it, they would have the catch history to go with it and I think they would be eligible to receive a license.

Benton: I remember this issue quite clearly and just to recall some of the history, very short, but to recall some of the history. . . at the June meeting this issue got tangled up in the foreign ownership question which Ms. Behnken raised and at the June meeting the Council remained silent in the end on the matter of foreign ownership because we had requested guidance from NOAA General Counsel. And, at our September meeting this was brought back up by Counselor for clarification. We did not have guidance on foreign ownership requirements but we did recognize that it was a complicated area and that the license limitation program couldn't deal specifically with foreign ownership. So we opted for Title 46 and the requirements that Counselor's laid out. But what we did also do was discuss quite clearly who gets the licenses and we adopted, and I think we had quite a discussion at the time about who those licenses would be issued to, and my recollection, and I'm looking back at some notes that I had from that meeting in September, my understanding is that the licenses were to be issued

to the current owners as of 6/17/95 and that those were the people that would receive licenses and that there was some concern from Council members about individuals who might have retained contractual rights or to fishing history and that it was our sense of the matter at the time that if there was a contractual arrangement regarding fishing history that that contractual arrangement would be honored, but that initial issuance of licenses would be to vessel owners as of 6/17/95 and I think we were very clear about that and I don't think that there should be any confusion in that regard. If there is, perhaps we should get the record from the September meeting and review it tomorrow.

Lauber: I think we can take this up again in the morning if we have to. It looks like we've about been preempted here, so we'll recess until 8:00 a.m.

[Next Day]

Anderson: I think I want to apologize for confusing everybody yesterday. I think I'm somewhat unconfused now and I just want to pass that along. In going back and looking at the newsletter from October which has the September summary on it, it says "the Council confirmed their intent to issue licenses to the current owner of a vessel as of June 17, 1995. The owner as of June 17, 1995 would have to be eligible to document a fishing vessel in the U.S." And, the point is that a qualified person owning a vessel on that date which has a catch history will be eligible to apply for a license for that vessel. The key is it doesn't matter whether that vessel was U.S.-flagged or Russian-flagged on that date. If the owner of that vessel, no matter what flag it is, remains a qualified person eligible to document a vessel then they can so receive a license.

Benton: While that's somewhat right, I want to make sure that we're very sure in what we're talking about here because I think we need to ensure that because of the confusion that has reigned over this issue that we are getting exactly what our intention is down. I'm looking at the minutes from the September '95 meeting, and the minutes state, and I'm going to quote here, "there was some confusion among staff and industry whether the Council intent was to have a license issued to the current owner as of 6/17/95 or as of the date of application for a license. Staff also requested clarification regarding transfers or . . . to fishing history." The minutes go on to say that I [David Benton] moved to reaffirm Council intent that the current owner be the owner as of the date of final Council action and that transfer of fishing rights would be recognized. And I think what we were doing there was recognizing that there have been transactions where somebody sold the vessel and they had entered into a contractual arrangement regarding the disposition of the fishing rights for that vessel and that we wanted to recognize that those transfers were legitimate so that somebody who had sold the vessel to somebody else prior to 6/17/95 couldn't come back later and say, 'oh, I've got the rights to that vessel even though you own it now.' Unless there was some contractual arrangement specifically setting that out that was signed and notarized and otherwise very firmly documented prior to 6/17/95, and it was persons who own the vessel, persons as defined in U.S. law, who own the vessel at that time. And I think we need to be very clear about that, but that's my recollection of what we did.

Pereyra: What happens in the case of parties that have entered into a transaction prior to that date, they had some sort of verbal understanding that in fact that the person that sold the vessel would be eligible for the rights and then they read this language and they say we'd better post-date that verbal agreement we have, and they go ahead and do that. There's nothing to prevent somebody from doing that and putting that date on there. They would then qualify.

Benton: I understand what Dr. Pereyra is saying and I believe that it was our intention that if they did not have this firmly locked into a written contract, signed and notarized, that they would not qualify. There is a hardship provision that we have provided for, it's very tight, but that's my interpretation that basically we were trying to be as clear as we could and we were trying to avoid some of the confusions that we saw with the halibut-sablefish program and with the moratorium. And it did get confused in the foreign ownership issue for a while, as Capt. Anderson pointed out, but in September what we tried to do was to express very clear intent that there would be

a bright line. And that line is, you're either there or you're not there; you're either in or you're out, and that line was 6/17/95.

Pereyra: Well, I recall some discussions we had regarding the role of the courts and the role of the Council. And, it was my understanding at that time, and again I don't have that good of recollection some times, but it was my understanding at that time that we did not want to be playing the role of the courts and it was perfectly appropriate for the courts to interpret whether or not the party that had previously owned the vessel that claimed that they had the rights to the license that was issued as of the owner on that particular date, 17th of June, 1992 [sic], whatever the date, that that was the role of the courts and it wasn't for the Council to make an interpretation; say, somebody down in the RAM Division says, 'well, here's this document therefore it doesn't go to party B that owned the vessel on the 17th, it goes to party A that owned it prior to that and reserved those rights for themselves.' That's for the courts to interpret.

Benton: I recall that discussion as well, and what I think we said was, 'these are the rules as we have constructed them; if there is ambiguity of the contractual relationship between two individuals or two persons, that's their business and they can take that to court to be resolved and until such time, nobody gets a license until it is resolved.' I remember that discussion quite well and I agree with you, Dr. Pereyra, we did say that that was a domestic matter, or a civil matter, between those two parties. All we can do is draw up the rules and then they can go get an interpretation and I believe that we were also very clear that until such time that no license will be issued.

Pereyra: That's not a very bright line. That's pretty fuzzy to me; I mean, if I was in the RAM Division I would much prefer to see something that was really bright. That you go to the Coast Guard documentation office, you get the documentation that says this particular party or this corporation or partnership, whatever, owned the vessel on the 17th of June 1992 [sic] and that's who the license is issued to.

Lauber: Well, we're never going to be able to cover all of the parties that might have an interest in this, license or ITQs, or whatever. I don't think RAM intended to do that. I mean, there can be all types of people and they may well issue a license to someone, the person may not even complain until they find out that it has been issued to another person. And then go court. I don't think we can do that, Dr. Pereyra. What we need to do, the bright line I think Mr. Benton is talking about, is so that RAM does have one as far as knowing. . . some of these other ambiguities are taken care of. For instance, RAM trying to get into making an interpretation of whether an oral contract is enforceable, that's ridiculous. They can't do that, and even if they tried to, someone would take it to court probably and challenge it.

Pereyra: Well, who gets the license? The party that previously owned the vessel, that reserved the rights to that license when it's issued on the 17th of June, or the party who actually owned the vessel on the 17th of June? Who gets the license?

Lauber: I think that we decided that if there's some kind of agreement and it's contested, that's going to be decided by the court.

Tillion: Only if it's written though.

Lauber: Well, that's not necessarily the case, and again, we're not . . . generally yeah, obviously, but maybe the person can prove their case without it being in writing; I don't know. It's not real property, so . . .

Pereyra: Maybe that's why I never went into the legal profession, 'cause I don't think logically. But, . . .

Lauber: Well, that may be well be, but if that's the case then it's all these wonderful logical thinkers out there that have caused us to form things called the law and have people like lawyers. If you were so damn logical you wouldn't need it.

Pereyra: After the 17th of June 1992 [several people corrected him - 1995]; 1995, excuse me, who gets the license after that? We don't worry about that.

Benton: The person who gets that license has to be a qualified person; the person that would get a license would be the person that owned that vessel on 6/17/95 and then . . . [interrupted]

Pereyra: Then they make subsequent transfers based upon whatever.

Benton: And if they make a subsequent transfer of that and really that's more along the lines of what we were really concerned about, was subsequent transfers. And if somebody transferred a vessel that transfer of rights would be recognized and those rights would go to the vessel if there wasn't a contract.

Pereyra: So that's something for the RAM Division to deal with, then.

Lauber: O.K., can we move on? That ends your . . .

[miscellaneous comments]

Pereyra: Now, I want to make absolutely certain that we're not going to wind up in a situation where all of a sudden a person, one person has the license because they were entitled to it on the 17th of June 1995 and then all of a sudden we get someone who says, 'wait a minute, that vessel was entitled to a license on the 17th of June 1995 and I'm the owner of that vessel today therefore I'm entitled to a license, because that's when the licenses are being given out, so that we don't end up giving out two licenses.

[several people speaking --"no, we're not going to give out two licenses. . ."]

Benton: No. We dealt with the issue just raised by Dr. Pereyra quite clearly, expressing our intent that there would be only one license. We were also very clear in expressing our intent that this bright line should be as firmly interpreted as possible, that in the interpretation of what the Council is addressing here, that barring any other concrete and explicit evidence that it is the owner of that date, it is important that that interpretation being very firm and very clear. What we were attempting to do is deal with the exceptions to the rule, if you would, in some manner, but the other thing that we did discuss and that we should be clear about again here, is that if there was not clear and definitive evidence that was in place prior to or on June 15, 1995 that can be clearly documented, that then that license goes to the current owner as of that date, if they were qualified, barring any other evidence, they do not get that and then it is a civil matter that is beyond the scope of the Council in some of those instances that we've talked about. But I believe it was our intention that that was the exception and a very limited exception at that.

Lauber: O.K., anything else?

John Lepore: Mr. Chairman, I think that that wraps up this issue here and I think that in fact the language, at least the author firmly believes, that the language in the current draft does reflect that intent. That by no means ties the Secretary to approving this draft language, but I think at this point it is clear.

Lauber: O.K., now, we haven't done anything new here, have we? This is all clarification?

Lepore: That is correct.

Lauber: Let's move on then.

[end of comments on this subject]

NMFS regarding all matters relating to a CDQ group's activities.

CDQ species means any species or species group that has been assigned to a CDQ reserve as specified at § 679.31(b)-(f).

Crab species means all crab species covered by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, including, but not limited to, red king crab (*Paralithodes camtschatica*), blue king crab (*Paralithodes platypus*), brown or golden king crab (*Lithodes aequispina*), scarlet or deep sea king crab (*Lithodes couesi*), Tanner or bairdi crab (*Chionoecetes bairdi*), opilio or snow crab (*Chionoecetes opilio*), grooved Tanner crab (*Chionoecetes tanneri*), and triangle Tanner crab (*Chionoecetes angulatus*).

Crab species license means a license issued by NMFS that authorizes the vessel designated on the license to conduct directed fishing for crab species.

Directed fishing means:

(3) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition, or, with respect to license limitation crab species, the catching and retaining of any license limitation crab species.

Eligible applicant means:

(1) A qualified person who owned a vessel on June 17, 1995, that made legal landings of license limitation groundfish or crab species in the appropriate areas during the qualifying periods specified in § 679.4(i) (4) and (5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) A qualified person to whom the fishing history of a vessel that made legal landings of license limitation groundfish or crab species in the appropriate areas during the qualifying periods specified in § 679.4(i) (4) and (5) has been transferred by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this definition, for purposes of eligibility for an area/species endorsement specified at § 679.4(i)(5)(ii)(H), an eligible applicant also includes (i) an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one landing of red or blue king crab in the

appropriate area during the period specified in § 679.4(i)(5)(ii)(H), or (ii) a corporation that owned or leased a vessel on June 17, 1995, that made at least one landing of red or blue king crab in the appropriate area during the period in § 679.4(i)(5)(ii)(H), and that was operated by an individual who was an employee or a temporary contractor;

Eligible community means a community:

(1) That is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92-203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

Groundfish license means a license issued by NMFS that authorizes a vessel to conduct directed fishing for license limitation groundfish.

Legal landing means a landing in compliance with Federal and state commercial fishing regulations in effect at the time of landing.

License holder means the person who received a groundfish or crab species license by initial issuance or transfer, or the individual designated to use that license to conduct directed fishing for license limitation groundfish or crab species by the person who received a groundfish or crab species license by initial issuance or transfer.

License limitation groundfish means target species and the "other species" category, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program are not considered license limitation groundfish.

Managing organization means the organization responsible for managing all or part of a CDP.

Maximum LOA (MLOA) means:

(1) (Applicable through December 1998) with respect to a vessel's eligibility for a moratorium permit:

(i) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is less than 125 ft (38.1 m) LOA, 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less.

(ii) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is equal to or greater than 125 ft (38.1 m), the original qualifying LOA.

(iii) For an original qualifying vessel under reconstruction on June 24, 1992, the LOA on the date reconstruction was completed, provided that maximum LOA is certified under § 679.4(c)(9).

(2) With respect to the license limitation program, 1.2 times the LOA of the vessel on June 24, 1992, or if the vessel was under reconstruction on June 24, 1992, 1.2 times the LOA of the vessel on the date reconstruction was completed, except that the maximum LOA of a vessel cannot exceed:

(i) 59 ft (18.0 m) LOA, if the LOA of the vessel on June 17, 1995, or on the date reconstruction was completed, was less than 60 ft (18.3 m);

(ii) 124 ft (37.8 m) LOA, if the LOA of the vessel on June 17, 1995, or on the date reconstruction was completed, was less than 125 ft (38.1 m); or

(iii) The LOA of the vessel on June 17, 1995, or on the date reconstruction was completed, if that LOA was 125 ft (38.1 m) or greater.

Person means:

(1) For purposes of IFQ species and the CDQ program, any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen.

(2) (Applicable through December 31, 1998). For the purposes of the moratorium, any individual who is a citizen of the United States or any U.S. corporation, partnership, association, or other entity (or their successor-in-interest), whether or not organized or existing under the laws of any state.

Processing, or to process, means the preparation of, or to prepare, fish or crab to render it suitable for human consumption, industrial uses, or long-term storage, including but limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Prohibited species quota (PSQ) means the annual amount of a prohibited species listed in § 679.21(b)(1), in metric tons or numbers, that a CDQ group is

mitted to catch based on an allocation of that species which has been approved by NMFS.

PSQ allocation means a percentage of a PSQ reserve specified pursuant to § 679.31(g) that is assigned to a CDQ group when NMFS approves a proposed CDP.

PSQ species means any species that has been assigned to a PSQ reserve as specified at § 679.31(g) for purposes of the CDQ program.

Qualified applicant means, for the purposes of the CDQ program:

(1) A local fishermen's organization that represents an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities); or

(2) A local economic development organization that represents an eligible community or group of communities, and that is incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDP, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

Qualified person means:

(1) With respect to the IFQ program, see IFQ Management Measures at § 679.40(a)(2).

(2) With respect to the license limitation program, a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

Resident fisherman means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address.

State means the State of Alaska.

Vessel length category means the length category designated on a license based on the MLOA of the vessel.

4. In § 679.4, paragraph (e) is revised and paragraphs (a)(6) and (i) are added to read as follows:

§ 679.4 Permits.

(a) * * *

(6) **Harvesting privilege.** Quota shares, permits, or licenses issued pursuant to this part are neither an absolute right to the resource nor any interest that is subject to the "takings" provision of the Fifth Amendment to the U.S. Constitution. Rather, such quota shares, permits, or licenses represent only a

harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

(e) **CDQ permit—(1) Applicability.** This paragraph applies to vessels or processors required in § 679.32 to obtain a CDQ permit prior to harvesting or taking deliveries of CDQ catch.

(2) **Application for a permit.** A complete application for a CDQ permit must include the following:

(i) The name and signature of the person submitting the application and the date the application was signed.

(ii) The year for which the CDQ permit is requested.

(iii) Whether the vessel or processor has received a CDQ permit before and, if so, the most recent year.

(iv) The vessel or processor name.

(v) The Federal fishery or processor permit number.

(vi) The street address, mailing address, telephone number, and fax number of the person submitting the application.

(vii) And for the following types of vessels or processors:

(A) **Trawl catcher/processors and motherships.**

(1) A diagram drawn to scale showing the location(s) where all CDQ and PSQ will be weighed on a certified scale, the location where observers will sample unsorted catch, and the location of the observer sampling station as described at § 679.28(d), including the observer sampling scale.

(2) The name of the manufacturer and model of the motion-compensated observer sampling scale.

(3) A copy of the most recent at-sea scale inspection certificate.

(B) **Shoreside processing plants.** A diagram drawn to scale showing the location(s) where all CDQ and PSQ will be sorted and weighed on a scale certified by the State of Alaska.

(C) **Longline and pot catcher/processors and catcher vessels.** The name of manufacturer and model of the motion-compensated observer sampling scale.

(3) **Issuance of permit.** A CDQ permit will be issued to the applicant when the following requirements are met:

(i) The Regional Administrator receives a completed CDQ permit application.

(ii) NMFS completes an inspection of the vessel or processor and verifies that the following requirements are met.

(A) The scale(s) on trawl catcher/processors or motherships to weigh CDQ catch have been certified by an authorized weights and measures

agency within twelve months of the date of inspection.

(B) The scale on a trawl catcher/processor or mothership is located so that an observer can sample unsorted catch after it has been weighed on the scale.

(C) The observer sampling station on a vessel meets the requirements of § 679.28(d).

(D) The scale or scales in a shoreside processing plant meet the requirements of § 679.28(c) and the CDQ observer can monitor the sorting and weighing of all CDQ species.

(4) **Duration.** CDQ permits are effective the calendar year requested by the applicant. Issuance of a CDQ permit means that the vessel or processor complied with the requirements in paragraph (e)(3) of this section on the date the vessel or processor was inspected. Once permitted, vessel and processor owners and operators also are responsible for complying with all equipment and operational requirements in § 679.28 and § 679.32.

(i) **Licenses for license limitation groundfish or crab species—(1) General requirements.** (i) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority must have a groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to conduct directed fishing for license limitation groundfish only in the specific area(s) designated on the license and may only be used on a vessel that complies with the vessel designation and vessel length category specified on the license.

(ii) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within that portion of the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority must have a crab species license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for crab species. This crab species license, issued by NMFS to a qualified person, authorizes a license holder to conduct directed fishing for crab species only for the specific species.

[Excerpted from transcripts of Council discussion on License Limitation Program, June 1995]

Lauber: Okay, that's enough on that. Let's move on. We move to License Designations. Someone have a motion?

Benton: Mr. Chairman, I'd move item 9,000. This would establish License Designations for catcher vessels and catcher processors by vessel length. Vessel lengths would be less than 60 feet, 60-124 feet, and 125 and above. Mr. Chairman, this would also add a gear designation to the Eastern Gulf, the new area for the Eastern Gulf, the East Yakutat and Southeast Outside, for the use of legal fixed gear only.

Behnken: Second.

Benton: Mr. Chairman, as we've gone through this process, we have discussed many different kinds of options. This round before the Council to put the finishing touches on a license limitation program started well over a year and half ago, almost two years ago. We have discussed any number of issues with regards to the problem statement, in terms of preemption, in terms of coastal community impact, in terms of need for stability in the fisheries, in terms of the need to come up with proposals that deal effectively with bycatch and waste. Mr. Chairman, no single approach to fisheries management is going to answer all of the problems that are identified in the CRP problem statement. There are 14 specific items that are identified. There are two general over-arching approaches to the problem and the problems facing this fishery, or the various fisheries that are under the jurisdiction of this Council. The reason that I chose this designation is because as we've seen through the discussion we've had over those numerous Council meetings, the use of vessel size categories had some utility in dealing with the number of problems that are identified in the problem statement. These designations will allow us to deal with preemption; conflicts both between areas and vessel categories; it will allow us to focus attention within fisheries and to prevent unnecessary and undue movement of capital between categories of vessels; it will allow us to differentiate between catcher vessels and catcher processors, and it will provide a basic foundation for any future steps we might take in the CRP process. I think those are all consistent with the debate that has occurred at the Council, certainly since January of last year and throughout the debate and discussions on CRP. When the Council was looking at an IFQ program, and only an IFQ program early on, these designations were an integral part of that IFQ program. These kinds of designations are very similar to the designations in the halibut/sablefish IFQ program. I think that these will provide the Council the ability to more accurately focus attention on the management problems that are identified in the problem statement. The reason I chose the item 9,000 instead of item 5,000 is based on public testimony that we've heard from residents from southeast Alaska; based upon the concerns that have been expressed regarding preemption in southeast especially given the reconfiguration that we've done in the management areas; the potential impacts that preemption could have on the fleet and fisheries in those communities; the amount of discard waste that is occurring in the fisheries off southeast, which I believe are undue and unnecessary; and I think that if we employ this that it will not result in any undue burden on the trawl industry or on any particular gear group, but will indeed address some of the major problems that face the southeast fisheries. I'm specifically referring to preemption conflicts between gear types that are identified in our problem statement; allocation preemption conflicts between and within industry sectors; bycatch loss of groundfish; economic loss and waste associated with discards; and associated problems that have been identified in the problem statement. Thank you.

Morris Barker: I guess I would speak against this particular motion. I also listened to the public testimony and read the documents that were provided. This proposal does not provide for any opportunity to harvest Pacific ocean perch stocks or pollock stocks. I see a direct impact to the national economy and I guess by subsequent action, the analysis does not directly deal with those kinds of impacts. We have viable fisheries that are being precluded. We have some of the issues you did raise about the category of the fishers participating that are handled in other options. I think that this particular motion is not to the best benefit to the nation or the fisheries that are involved in this fishery.

Behnken: Thank you, Mr. Chairman. I'm speaking in favor of the motion. I think Mr. Benton has done a fairly adequate job of covering the reasons for most of it. I would add only that I believe the designation for fixed gear only in Southeast speaks directly to the problem statement of this entire comprehensive package and supporting the stability, economic well being, diversity of the seafood industry, social needs of the communities dependent upon that industry. There's a number of places within the SIA that characterize the Southeast fleet. In particular, I would cite page 237, speaking in reference to Southeast, "Groundfish stocks are not nearly as large as for areas further west. The sheltered nature of much of the fishing grounds has fostered the fleet composed primarily of relatively small boats which do not use trawl gear. Local boats catch P. cod and rockfish primarily with longline, some with pots as well. Local processors are set up to handle this amount of catch but could not accommodate larger landings for trawl vessels." I cite this because the potential impacts of not designating this area fixed gear only would accrue not only to the catcher vessels that operate here, but the shorebased processors and the communities they're a part of as well. I think the AP did a really exceptional job for us back in April of saying we've got some very different fisheries here between our industrial fisheries and our artesional fisheries. They broke it down for us and I think with the steps we have taken at the last meeting of sort of starrng our preferred options, we started to address that. We've taken steps for Western Alaska. We've taken steps for this area by looking at jig exemptions. We've taken steps for Central and Kodiak by saying West Yakutat is where you've usually fished, West Yakutat is an area you'll still have access to. What Southeast needs is what Southeast is asking for and that's protection from the potential preemption east of 140, which is the historic grounds of that fleet. In response to Mr. Barker's concerns, in re-examining the biomass of the fisheries or the species in the Eastern Gulf, some 40 to 80% of the species you mentioned - pollock, flatfish, Pacific cod have been reallocated to West Yakutat which is where they have been historically caught and trawled for and will still be accessible to that Central Gulf fleet. I don't believe there'll be very much of these quotas that go unharvested. What's left is some rockfish species that have been taken, some of them by both gear types; Pacific ocean perch is in a rebuilding stage. Some of the other species are depressed and are available in only very small quantities. Targeting them with trawl tends to cause some high discard and waste problems. I think, as is mentioned, if we see the kind of rebound in the Southeast area that would really leave some significant amounts of fish on the table, in a limited sense, in a careful sense, maybe we can make that accessible. So with that Mr. Chairman, I'm in support of the motion.

Pereyra: I have to speak in opposition to the motion as it's presently configured. A total ban on trawling east of 140 in my mind is neither appropriate or acceptable for a number of reasons. First of all, this argument of preemption I have a real problem with, because these fisheries are separated by species to a large degree. There's no so-called artesional fisheries that take place on POP; as has been stated, no one's been able to demonstrate yet that ocean perch will in fact bite on a baited hook. So fixed gear really is not an appropriate form of gear for those species. The same with pollock. You can probably catch some pollock on a baited hook, but I dare say it probably would not be an economically attractive fishery. Maybe make a sport fishery out of it or something when they come up to the surface at night. I think that is probably a hollow statement that in fact there is a preemption argument. As far as dependence of communities on these resources, these communities are not depending on the ocean perch, not dependent on the pollock, in fact, by this amendment you are precluding the opportunity that maybe ocean perch and pollock might go into some of these communities. I mean I can see in the future where there could be an opportunity to process these species on shore so there would be some benefit to be derived and this, I think, really works in the opposite direction. But more important than that, Mr. Chairman, I'm concerned that this particular motion as it's presently configured violates, as I see it, at least six of the seven national standards. This measure does not prevent overfishing while achieving optimum yield on a continuing basis, is national standard number 1. National standard number two, it's not based on the best scientific information because the best scientific information from our SSC would argue against this particular amendment. In my mind, it does discriminate between residents of different states, which is national standard 4, and that's in violation of it. I don't think it promotes efficiency. It promotes inefficiency - national standard 5. A sixth national standard, it doesn't take into account or allow for contingencies in variations among fisheries. And lastly, I don't think it minimizes costs. In that regard, I think that any measure we have that violates national standards as severely as that particular measure does, I think is something we should reject and maybe look at another way of addressing this particular issue.

Tillion: If he hadn't so spoke about Pacific ocean perch, I intended to be silent. This is a species with a life expectancy of about 90 years, doesn't spawn until it's 12. It's at 1/16th of its former strength and I hear a fleet thirsting to get at their blood already. I think we're a little early. I think it's going to take a long time to rebuild the stock and for somebody to say you're closing off an area to the harvest of this species, I say bully. We should close off the whole Gulf of Alaska to the harvest of this species at least until they're about 35% of their former strength which is all our rebuilding program ever asked for. I'm definitely going to be voting in support of this.

Behnken: In response to Wally's comments, there are two kinds of preemptions. There's preemption that's head-on competition for the same species and there's the kind of preemption that's occurred in Southeast repeatedly which has been sometimes competition for grounds. More recently, it's been through bycatch and the bycatch of one species by one or two trawl vessels who come through on their way to the Central Gulf shutting down a local fishery that's absolutely essential to about 1,000 boats in Southeast Alaska when that's all they've got, when they're not mobile to go to any other areas. The boats in Southeast, the information shows, qualify, I think, the average is 1.3 endorsements which basically rounds down to 1. This is the area that they have to fish and preemption for them, that's life or death. The way National Marine Fisheries Service has handled this over the past couple of years is if something goes wrong and they've taken a step to try and correct it. Boy, there's a long list of the things they've done. We've put a 1% bycatch allowance on to keep that preemption from occurring. We still have more bycatch. We still have more waste. We've taken species out of demersal shelf and we've moved some into pelagic. We've moved them into other slope. There's been all kinds of things to try and keep up with this, but that threat is still there and until something, maybe somewhat proactive, but I'd almost say it's just finally time. That threat's going to remain. The concern from the people in Southeast, unanimous concern, there's nothing that concerns them more. It's going to be there.

Pereyra: I'd just like to briefly as I can respond to Mr. Tillion's comment in due respect to Mr. Tillion's thinking on ocean perch. I think that particular concern is better addressed through the annual TAC setting criteria, not through some sort of draconian measure that would just automatically close an area and foreclose any possibilities for vessels to operate in that area for species which might be appropriately taken by them.

Fluharty: I think we're losing sight of license limitation as the purpose of this regulation. We're sort of piling on a number of other things that may have certain merits. They may be better done in other ways like has been mentioned. So I think that in just thinking about what this measure does and what this particular license designation does, does very little with respect with the interest in limitation. If we look at the analysis, particularly the analysis for the potential for expansion of this particular fleet under this situation, there's a huge potential that I think is going to essentially swamp out any community stability in that area. I'd remind us that we're trying to deal with license limitation, not all the other things that potentially should and could be addressed by the Council.

Benton: A couple of comments. I believe this is quite germane to license limitation and to the comprehensive planning that we're engaged in. This is, as I believe I said a little earlier, this program is one component of an overall approach that the Council is using and I believe that this is appropriate to employ at this time. If you look at the analysis, the trawl fleet concentrates generally in deeper waters, on the deeper side of the 200 meter contour. If you look at the analysis, there's roughly five species that are found in this area. These are generally POP, shortraker roughey, other slope and thornyheads. Public testimony and the analysis that's been provided to us, indicates that the fixed gear fleet overlaps generally with all those species except for POP. But it is in the prosecution of that POP fishery and a couple of other directed fisheries that the preemption begins to occur because of bycatch and subsequent discards. Mr. Chairman, I was particularly interested in public testimony that spoke to targeted fisheries like northern rockfish, other rockfish species that those were the target species and yet it was the high value species that were being retained to pay for the trip. I'm looking at some of the data that was provided to us and I see an 88% discard in the target species and a 76% retention of a bycatch species. I think that's indicative of a problem in this area with these fisheries. It's a problem that can be addressed by this action. I wanted to refer just briefly to the scientific advice as provided to us by the SSC and also it's in the analysis. Something that did cause me some concern when I saw this proposal in April and at the time I was not persuaded

that this proposal would be a good way to go, that concern had to do primarily with survey design and whether or not the stock status could be segregated out because of the reconfiguration. The subsequent analysis that we have indicates that indeed that can be done for the majority of the species and that if we take action now instead of waiting that we can work with National Marine Fisheries Service to have the Gulf survey redesigned so that we can collect that data if we need to approach the problems of TAC setting that Dr. Pereyra has pointed out. That has persuaded me that that is probably quite manageable and do-able. I think that with that problem behind us that we can move forward with this. The comment that the SSC made on this, I found also quite interesting, the SSC referred to the problem statement that the SSC believes that once a problem is defined, they could look at the impacts. They did not say that they had a problem statement at the time. I questioned the SSC representative whether or not they had even bothered to review the problem statement for CRP and the problem statement that we are . . . [change to tape 34] . . . operating under here today and the answer to that was "no." Mr. Chairman, again I call our attention to the problem statement we're operating under and there are numerous items in there as I've already spoken to that I believe are germane to the motion and support adoption of this motion. Thank you.

Lauber: Any further discussion? Are you ready for the question? Call the roll on the motion on the 9,000.

Pautzke:

Benton	Yes
Fluharty	No
Hegge	Yes
Mace	No
Collinsworth	Yes
Pereyra	No
Samuelsen	Yes
Tillion	Yes
Barker	No
Behnken	Yes
Lauber	Yes

Pass.

Lauber: Alright, we'll move to . . .

Samuelsen: I'd like to make a motion to allow compensation once an ITQ program is in place to compensate the displaced boats of the Gulf and Bering Sea.

Lauber: Could you restate that again?

Samuelsen: I'd like to offer a compensation package for the displaced boats in the Gulf on this motion that just passed the Council and that would be to compensate those vessels that are displaced that qualify under license limitation program and once we go to an ITQ program that those vessels will be compensated in the Gulf for their loss of fishing opportunity or in the Bering Sea for the loss of fishing opportunity in the Gulf.

Lauber: Okay, I understand it. Is there a second to that motion?

Tillion: Second.

Lauber: Would you care to speak to your motion?

Samuelson: Although I voted for it, I wasn't totally convinced through public testimony we've heard that on reports of bycatch the trawls fisheries are 100% observed, the other boats are not. Under the license limitation program, it was pretty convincing to me that we might be increasing the problem in the Gulf by allowing more boats in than are presently participating in there. Staff has presented data that showed two vessels were in there. I think we've set precedent. We've compensated the CDQ groups in the halibut fishery; I believe that compensation was in the Bering Sea from the Gulf so I think we've set the precedent.

Lauber: Any further discussion?

Mace: We're assuming of course that we're going to have an IFQ program. This is going to bite someone else. You're taking away from someone to give to them and I'm not sure that this is the appropriate time to cover this.

Tillion: As the second, I'd like to speak in favor of it because if we don't flag it fairly early, we might not go to an ITQ program. We might stay in limited entry in which case it doesn't come up, but it should be known that those people that were displaced have the right to some compensation in the Bering Sea for being displaced from the Gulf. I think it's only fair to flag it now. I don't think it's a big item, but I think it gives a little security to some of those that are being squeezed at this time. I think it's a good thing to have.

Pereyra: I think this certainly is a noble gesture, but I'm not so sure if it's really going to be that effective. For example, shorttrakers, rougheyes, northern rockfish, so forth, you'll find those in the Bering Sea for example. So, I have a difficulty with seeing with how you come up with some kind of compensation scheme that is transferrable that way. I do think it's a noble gesture and maybe it's one to make us feel better that we've now, after we've hurt a particular group, we're having some pangs of our action, so we want to do something to give them some help. I think it's a nice idea, but I think we should have thought of that before we voted in the last motion and maybe made some adjustments that would have been more appropriate to take into consideration some of their needs.

Benton: I have no problem with the motion and I would support the motion. The only question I have is whether or not we want to do that at this time or whether we want to do it towards the end under General Provisions because it strikes me that we may have some discussion of the relationship of licenses to future actions and what that all means. With that question just sort of hanging there, I don't expect an answer. I guess I'd vote in favor of the motion.

Samuelson: I have no problems waiting until General Provision time and institute that.

Lauber: Yeah, that's where it would be placed anyway. I think Ms. Behnken is next.

Behnken: If we're going to withhold the discussion . . . I guess I'd just raise one question and we're coming back to this, people are going to be thinking about it, but the motion we passed on 9,000 said that anybody who had earned a license east of 140 would still get that license, but it would be designated hook-and-line. If we compensate people, I'm not quite sure how you do that. I mean you still have the opportunity to fish hook-and-line and I recognize some of those species are pretty difficult to catch. So far, we haven't really figured out how to do it . . . maybe pots or whatever . . . but I mean if we're coming back to that it's something we could be thinking about.

Lauber: Let me ask Counselor a question. I don't know that the motion was worded this way, but it's my understanding the effect of this would be to notice the public, so to speak, that it would be the Council's intention to do this when we at such time as we adopt an individual fishing quota in the Bering Sea. However, that could only be that. Wouldn't the Council and the Secretary at that time have the authority to do or not do this?

Lindeman: Mr. Chairman, maybe if the Council just said that they would consider whether or not to provide compensation. The public could interpret maybe a statement that the Council intends, that the Council is

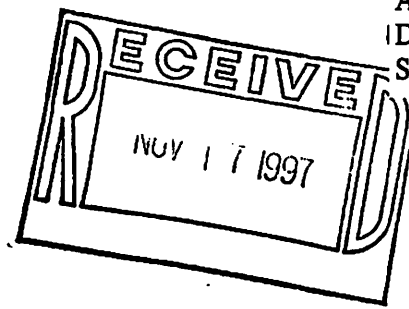
somehow committing themselves even though you'd have to have a record, maybe analysis of how many vessels etcetera. If the Council doesn't want to bind itself or the Secretary then you might just say "consider."

Lauber: You have a different Council and my concern at this point is that we don't have a record built for it and if you would accept that as intent that the Council would consider at such time as it adopts an ITQ system in the Bering Sea that consideration be given for persons displaced. I would assume that the answer to that is like we've done before, we've converted one fish into another fish many times. That could be done even though it would not be the same species, it could be a similar value or something like that. Anyway if that's acceptable then the motion would be to that effect that Council at some future time would consider doing it. Is there any further discussion on the motion? Is there any objection to the motion? Okay, better call the roll.

Pautzke:

Fluharty	No
Hegge	Yes
Mace	No
Collinsworth	Yes
Pereyra	No
Samuelson	Yes
Tillion	Yes
Barker	No
Behnken	Yes
Benton	Yes
Lauber	Yes

Pass.



Nov. 15, 1997

North Pacific Fishery Management Council
Dr. Clarence Pautzke, Executive Director
Mr. Rick Lauber, Chairman
Post Office Box 103136
Anchorage, Alaska 99510

Dear Rick,

If the Council were asked to vote to add 50 vessels to the GOA trawl fishery, would it do so? "An ounce of prevention is worth a pound of cure." An old saying, but it's true.

The Council has the opportunity now to apply an ounce of prevention to a potential source of further over-capitalization of the trawl fisheries in the North Pacific. But time is of the essence.

LLP has been approved by the Secretary. At some point in the near future a market will be formed for transfers of LLP permits with certain expectations about the rights conveyed in those sale. One of the expectations will be that there is no gear restriction associated with a permit.

The non-gear specificity of LLP permits combined with a number of other factors to create a potential wide open gate for further capitalization of trawl fisheries, particularly in the GOA. Those factors include:

- The exemption of ITQ boats from a requirement to hold an LLP permit as long as they don't target non-ITQ species.
- The granting of LLP permits to ITQ vessels based on bycatch landings of non-target groundfish.
- The removal of the moratorium provision that pot boats, qualifying on the basis of landing groundfish with pots, would only qualify for pot gear under the moratorium. But under LLP they are free to use trawl gear.
- Radical reductions of quotas and trip limits in the PFMC trawl fisheries.
- The potential implementation of buyback programs in NPFMC crab, and PFMC groundfish.

The last factor means there will be boats receiving a substantial subsidy to exit a fishery, and they may well employ that subsidy to enter another open fishery. Since both buyback programs only envision buy the right to participate in a particular fishery, these vessels will inevitably seek out other fishing opportunities.

The objective of the PFMC buyback is a 1/3 reduction in roughly 250 vessels in the trawl fleet. How many of these vessels could obtain LLP permits to trawl in the GOA without retiring comparable effort? All of them. As Mark Lundsten wrote in response to the question of whether he would be willing to sell his LLP permit:

"LLP permits will be sold from the IFQ fleet as soon as people are aware that they can do it, in my opinion. What the hell...dump your rights to catch P. cod and turbot (which most people don't pursue in our fleet anyway) as a target fishery and buy 20,000 lbs of halibut shares with the money....I don't think it's any mystery how it would work. Anyone who doesn't do it is a fool, and anyone who does it is a jerk."

There are a sufficient number of ITQ longliners over 60' who qualify for LLP permits but don't target other groundfish. They can sell the LLP permit and continue their operations. That permit can then be upgraded by 20% in length for use on a larger trawl vessel.

A plan amendment proposal to close this loophole was submitted to the Council and was included in the September Council notebooks. Though the Council ran out of stamina during the September meeting and did not give extensive consideration to plan amendment proposals, the Council should re-agenda consideration of this proposal at the December meeting.

Failure to close this loophole in a timely manner also precludes the option of ever having a meaningful buyback program in the trawl groundfish fishery in the North Pacific. All fixed gear licenses are potentially trawl license. This means that there is an almost inexhaustible supply of latent trawl licenses that would have to be retired by a buyback program before the fleet paying for the program received any tangible benefit.

Please place this item on the agenda for the December Council meeting.

Thank you.

dave fraser
F/V Muir Milach
PO Box 771
Port Townsend, Washington 98368



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

C-2

December 5, 1997

Dr. Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Clarence:

Thank you for your letter in which you raised two issues related to the recently approved license limitation program (LLP) for the groundfish and Bering Sea crab fisheries.

Qualifications of foreign-owned vessels

We have reviewed this issue and are confident that the proposed rule accurately reflected the fishery management plan (FMP) amendment language (enclosure 1) submitted by the Council and approved by NMFS on September 12, 1997. The FMP amendment language establishes two methods of eligibility for a license. Under the first method, a person had to be the owner, as of June 17, 1995, of a qualified vessel. The owner, as of June 17, 1995, must be a "person eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. Second, the FMP language establishes presumptions on the transfer of a vessel's fishing history, if that transfer is not specifically mentioned in a written contract, i.e., the vessel's fishing history transfers with the vessel if it was sold on or before June 17, 1995, and the vessel's fishing history remains with the seller of the vessel if the vessel is sold after June 17, 1995. This second method of eligibility is clearly stated in the plan amendment language and in the Council's newsletter of October 12, 1995 (enclosure 2).

The FMP amendment language further establishes that the above mentioned presumptions are to be followed unless a contract specified otherwise. The October 12, 1995, newsletter also stated that the Council advised NMFS to recognize written transfers or reservations of catch histories when issuing licenses, to the extent practicable.

Based on the FMP language and Council recommendations, the proposed rule text establishes that a person who is claiming eligibility based on ownership of a vessel's qualifying fishing history would need to meet the same requirements as a person who is claiming eligibility based on ownership of a qualifying vessel on June 17, 1995, i.e., eligibility on June 17, 1995 to document a vessel under Chapter 121, Title 46, U.S.C. This means that a person must meet the documentation requirements regardless of



on June 17, 1995, i.e., eligibility on June 17, 1995 to document a vessel under Chapter 121, Title 46, U.S.C. This means that a person must meet the documentation requirements regardless of whether that person's eligibility is based on (1) ownership on June 17, 1995 of a qualified vessel, or (2) subsequent ownership of a vessel's qualifying fishing history that was validly separated from the vessel by written contract.

This eligibility criteria is consistent with the FMP amendment language found at section 14.4.7.2.1 of the FMP for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area, section 4.4.1.2.1 of the FMP for the Gulf of Alaska Groundfish Fishery, and section 8.1.4.1.1 of the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands. If this FMP amendment language is not consistent with Council intent, however, as described in your letter, then changing the eligibility criteria would require another amendment to the FMP text. Any such amendment to the FMP text would require publishing a proposed and final rule. The proposed rule would need to explain the rationale for the new requirement for the second method of eligibility, i.e., that the owner, as of June 17, 1995, of the vessel from which the fishing history is transferred also must have been able to document the vessel on that date. This explanation would be necessary to provide the public with adequate notice that a new requirement was added to the existing requirement.

Southeast trawl closure

Another provision of the approved LLP will prevent the use of trawl gear in the Southeast Outside (SEO) District (east of 140 degrees W. longitude) of the Eastern Regulatory Area of the Gulf of Alaska (GOA). A vessel that qualified for a license under the LLP using trawl gear in the SEO would be issued a license for that district but would be able to use only legal fixed gear. Hence, when implemented, this provision would essentially close the SEO district to trawl gear.

The FMP for Groundfish of the GOA currently allocates 95 percent and 5 percent, respectively, of the TAC for sablefish in the Eastern Regulatory Area (comprised of the SEO and West Yakutat Districts) between fixed gear and trawl gear. The 5 percent allocation to trawl gear is intended for bycatch purposes. The 1997 TAC of sablefish in the SEO District was 3,840 mt. The trawl share was 192 mt.

By closing the SEO to trawl gear under the LLP, trawl vessels would not have access to 5 percent of the SEO sablefish TAC that historically has been specified for bycatch needs in other SEO

trawl fisheries. Given that the FMP requires that 5 percent of the Eastern GOA TAC be allocated to trawl vessels, the Council must make this fish available to vessels using trawl gear. According to NMFS stock assessment scientists, the resultant redistribution of trawl sablefish harvest from the SEO to the West Yakutat District would not pose resource conservation concerns given that sablefish in the SEO and the West Yakutat District comprise a single stock and that directed fishing for sablefish by vessels using trawl gear would continue to be prohibited.

The SEO trawl closure part of the LLP raises a gear allocation issue that apparently was not fully anticipated by the Council at the time it adopted the LLP. I see three alternative courses that would produce different allocation effects. First, the Council may choose to take no action on this issue. In that event, the full 5 percent allocation of the sablefish TAC to trawl gear in the Eastern Gulf would be available to trawl gear only in the West Yakutat district. If this had occurred in 1997, the trawl quota in West Yakutat would have been 312 mt, or about 13 percent of the total West Yakutat sablefish TAC of 2,410 mt, as opposed to the actual 120 mt quota for trawl gear. The second alternative would be to reallocate the trawl gear allocation in SEO to the fixed gear fishery in SEO. Again, based on the 1997 specifications, this would have provided an additional 192 mt of sablefish to the fixed gear fishery if it were in effect in 1997. The third alternative would be to leave the unused SEO trawl allocation in the water for conservation purposes. In this event, neither the fixed gear TAC in SEO nor the trawl gear portion of the TAC in West Yakutat would be proportionally increased. This alternative arguably would provide a buffer between the ABC and TAC for conservation purposes or for the rebuilding of the sablefish stock in SEO.

The second and third alternatives would require an FMP amendment because the current FMP provides for a 5 percent trawl gear allocation for the entire Eastern Gulf area. The FMP does not specify gear allocations by district within that area. We believe that the first alternative, i.e., no action, is the course we should follow until an FMP amendment is approved. This approach will satisfy our legal obligation to achieve optimum yield and to implement approved FMP amendments as soon as practicable. Although full implementation of the LLP is not likely until the 2000 fishing year, the SEO part of the LLP can be implemented relatively quickly. Alternatives that would require approval of an FMP amendment could be developed and implemented during 1998 in time for the 1999 fishing year.

I hope that this information will be helpful to the Council as it discusses these two issues. I and my staff will be available to

assist the Council as necessary to achieve its management objectives.

Sincerely,

Arnold J. Berg
For Steven Penoyer
Administrator, Alaska Region

Enclosures

Proposed Plan Amendment Language for Licensing Vessels To Fish in the Groundfish Fisheries
in the Bering Sea/Aleutian Islands

To be added at end of Chapter 2.0.

Amendment 39, effective (*insert the effective date of the license program*):

Created a license program for vessels targeting groundfish in the BSAI, other than fixed gear sablefish after (*insert the effective date of the LLP*). The license program will replace the vessel moratorium and will last until the Council replaces or rescinds the action.

A new Section 14.4.7.2 titled "Vessel License Limitation for the Bering Sea / Aleutian Islands" would replace the moratorium language and would read as follows:

14.4.7.2 Groundfish License Limitation Program

Beginning on (*insert the effective date of the LLP*) a Federal groundfish license will be required for harvesting vessels (including harvester/processors) participating in all BSAI groundfish fisheries, other than fixed gear sablefish. However, the following vessel categories are exempt from the license program requirements:

1. Vessels fishing in State of Alaska waters (0-3 miles offshore);
2. Vessels less than 32' LOA;
3. Jig gear vessels less than 60' LOA using a maximum of 5 jig machines, one line per machine, and a maximum of 15 hooks per line.

Any vessel that meets the license programs qualification requirements will be issued a license, regardless of whether they are exempt from the program or not. The vessel license program will last until the Council replaces or rescinds the action.

14.4.7.2.1 Elements of the License Limitation Program

1. Nature of Licenses. General licenses will be issued for the entire Bering Sea / Aleutian Island area based on historical landings defined in Federal regulations. Vessels that qualify for both a Bering Sea / Aleutian Island and a Gulf of Alaska general license will be issued both as a non-severable package. Area endorsements will be issued along with the general license for the Bering Sea and/or Aleutian Islands. General licenses and endorsements will remain a non-severable package.
2. License Recipients. Licenses will be issued to owners (as of June 17, 1995) of qualified vessels. The owners as of this date must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. In cases where the vessel was sold on or before June 17, 1995, and the disposition of the vessel's fishing history for license qualification was not mentioned in the contract, the license qualification history would go with the vessel. If the transfer occurred after June 17, 1995, the license qualification history would stay with the seller of the vessel unless the contract specified otherwise.
3. License Designations. Licenses and endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three vessel length classes (< 60', ≥ 60' but < 125', or ≥

125' LOA).

4. Who May Purchase Licenses. Licenses may be transferred only to "persons" defined as those "eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. Licenses may not be leased.
5. Vessel/License Linkages. Licenses may be transferred without a vessel, i.e., licenses may be applied to vessels other than the one to which the license was initially issued. However, the new vessel is still subject to the license designations, vessel upgrade provisions, "20% upgrade rule" (defined in provision seven), and the no leasing provision. Licenses may be applied to vessels shorter than the "maximum LOA" allowed by the license regardless of the vessel's length designation. Vessels may also use catcher processor licenses on catcher vessels. However, the reverse is not allowed.
6. Separability of General Licenses and Endorsements. General licenses may be issued for the Bering Sea /Aleutian Islands groundfish, Gulf of Alaska groundfish, and Bering Sea /Aleutian Islands crab fisheries. Those general licenses initially issued to a person based on a particular vessel's catch history are not separable and shall remain as a single "package". General licenses transferred after initial allocation shall remain separate "packages" in the form they were initially issued, and will not be combined with other general groundfish or crab licenses the person may own. Area endorsements are not separable from the general license they are initially issued under, and shall remain as a single "package," which includes the assigned catcher vessel/catcher processor and length designations.
7. Vessel Replacements and Upgrades. Vessels may be replaced or upgraded within the bounds of the vessel length designations and the "20% rule". This rule was originally defined for the vessel moratorium program. The maximum length over all (MLOA) with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to conduct directed fishing for groundfish covered under the license program, except as provided at § 676.4(d). The MLOA of a vessel with license qualification will be determined by the Regional Director as follows:
 - (a) For a vessel with license qualification that is less than 125' LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125', whichever is less; and
 - (b) For a vessel with license qualification that is equal to or greater than 125', the maximum LOA will be equal to the vessel's original qualifying length.

If a vessel upgrades under the "20% rule" to a length which falls into a larger license length designation after June 17, 1995, then the vessel owner would be initially allocated a license and endorsement(s) based on the vessel's June 17, 1995 length. Those licenses and endorsements could not be used on the qualifying vessel, and the owner would be required to obtain a license for that vessel's designation before it could be fished.
8. License Ownership Caps. No more than 10 general groundfish licenses may be purchased or controlled by a "person," with grandfather rights to those persons who exceed this limit in the initial allocation. Persons with grandfather rights from the initial allocation must be under the 10 general license cap before they will be allowed to purchase any additional licenses. A "person" is defined as those eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C. For corporations, the cap would apply to the corporation and not to share holders within the corporation.

9. Vessel License Use Caps. There is no limit on the number of licenses (or endorsements) which may be used on a vessel.
10. Changing Vessel Designations. If a vessel qualifies as a catcher processor, it may select a one time (permanent) conversion to a catcher vessel designation.
11. Implement a Skipper Reporting System. NMFS will implement a skipper reporting system which requires groundfish license holders to report skipper names, addresses, and service records.
12. Vessels Targeting Non-groundfish Species. Vessels targeting non-groundfish species that are allowed to land incidentally taken groundfish species without a Federal permit before implementation of the groundfish license program, will be allowed to continue to land bycatch amounts of groundfish without having a valid groundfish license. Additionally, vessels targeting sablefish and halibut under the IFQ program will continue to be allowed to retain bycatch amounts of groundfish species.
13. CDQ Vessel Exemption. Vessels < 125' obtained under an approved CDQ plan to participate in both CDQ and non-CDQ fisheries, will be allowed to continue to fish both fisheries without a license. If the vessel is sold outside the CDQ plan, the vessel will no longer be exempt from the rules of the license program.
14. Lost Vessels. Vessels which qualified for the moratorium and were lost, damaged, or otherwise out of the fishery due to factors beyond the control of the owner and which were replaced or otherwise reentered the fishery in accordance with the moratorium rules, and which made a landing any time between the time the vessel left the fishery and June 17, 1995, will be qualified for a general license and endorsement for that area.
15. Licenses Represent a use Privilege. The Council may alter or rescind this program without compensation to license holders; further, licenses may be suspended or revoked for (serious and/or multiple) violations of fisheries regulations.

14.4.1.2.2.1 CDQ Allocation.

CDQs will be issued for 7.5% of the TAC for all BSAI groundfish species not already covered by another CDQ program (pollock and longline sablefish). A pro-rata share of PSC species will also be issued. PSC will be allocated before the trawl/non-trawl splits. The program will be patterned after the pollock CDQ program (defined in section 14.4.11.6), but will not contain a sunset provision. Also, Akutan will be included in the list of eligible CDQ communities.

Proposed Plan Amendment Language for Licensing Vessels To Fish in the Groundfish Fisheries
in the Gulf of Alaska

A new Section 4.4.1.2 titled "Vessel License Limitation for the Gulf of Alaska" would be added and would read as follows:

Amendment 41, effective (insert the effective date of the license program):

4.4.1.2 Groundfish License Limitation Program

Beginning on (insert the effective date of the LLP) a license will be required for harvesting vessels (including harvester/processors) participating in all directed GOA groundfish fisheries, other than fixed gear sablefish throughout the Gulf of Alaska and Demersal Shelf Rockfish in the Southeast Outside area (East of 140°). Vessels fishing in State waters will be exempt, as will vessels less than 26' LOA. Vessels exempted from the Gulf of Alaska groundfish license program, will be limited to the use of legal fixed gear in the Southeast Outside area. The vessel license limitation program will replace the vessel moratorium and will last until the Council replaces or rescinds the action.

4.4.1.2.1 Elements of the License Limitation Program

1. Nature of Licenses. General licenses will be issued for the entire Gulf of Alaska area based on historical landings. Vessels that qualify for both Bering Sea / Aleutian Island and Gulf of Alaska general licenses will be issued both as a non-severable package. Area endorsements will be issued along with the general license for the Southeast Outside, Central Gulf including West Yakutat, and/or Western Gulf areas. General licenses and endorsements will remain a non-severable package.
2. License Recipients. Licenses will be issued to owners (as of June 17, 1995) of qualified vessels. The owners as of this date must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. In cases where the vessel was sold on or before June 17, 1995, and the disposition of the vessel's fishing history for license qualification was not mentioned in the contract, the license qualification history would go with the vessel. If the transfer occurred after June 17, 1995, the license qualification history would stay with the seller of the vessel unless the contract specified otherwise.
3. License Designations. Licenses and endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three vessel length classes (<60', ≥60' but < 125', or ≥ 125' LOA). Southeast Outside endorsements will be designated for use by legal fixed gear only.
4. Who May Purchase Licenses. Licenses may be transferred only to "persons" defined as those "eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. Licenses may not be leased.
5. Vessel/License Linkages. Licenses may be transferred without a vessel, i.e., licenses may be applied to vessels other than the one to which the license was initially issued. However, the new vessel is still subject to the license designations, vessel upgrade provisions, "20% rule" (defined in provision seven), and the no leasing provision. Licenses may be applied to vessels shorter than the "maximum LOA" allowed by the license regardless of the vessel's length designation. Vessels may also use catcher processor licenses on catcher vessels. However, the reverse is not allowed.
6. Separability of General Licenses and Endorsements. General licenses may be issued for the

Bering Sea /Aleutian Islands groundfish, Gulf of Alaska groundfish, and Bering Sea /Aleutian Islands crab fisheries. Those general licenses initially issued to a person based on a particular vessel's catch history are not separable and shall remain as a single "package". General licenses transferred after initial allocation shall remain separate "packages" in the form they were initially issued, and will not be combined with other general groundfish or crab licenses the person may own. Area endorsements are not separable from the general license they are initially issued under, and shall remain as a single "package," which includes the assigned catcher vessel/catcher processor and length designations.

7. Vessel Replacements and Upgrades. Vessels may be replaced or upgraded within the bounds of the vessel length designations and the "20% rule". This rule was originally defined for the vessel moratorium program. The maximum length over all (MLOA) with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to conduct directed fishing for groundfish covered under the license program, except as provided at § 676.4(d). The MLOA of a vessel with license qualification will be determined by the Regional Director as follows:
 - (a) For a vessel with license qualification that is less than 125' LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125', whichever ever is less; and
 - (b) For a vessel with license qualification that is equal to or greater than 125', the maximum LOA will be equal to the vessel's original qualifying length.

If a vessel upgrades under the "20% rule" to a length which falls into a larger license length designation after June 17, 1995, then the vessel owner would be initially allocated a license and endorsement(s) based on the vessel's June 17, 1995 length. Those licenses and endorsements could not be used on the qualifying vessel, and the owner would be required to obtain a license for that vessel's designation before it could be fished.

8. License Ownership Caps. No more than 10 general groundfish licenses may be purchased or controlled by a "person," with grandfather rights to those persons who exceed this limit in the initial allocation. Persons with grandfather rights from the initial allocation must be under the 10 general license cap before they will be allowed to purchase any additional licenses. A "person" is defined as those eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C. For corporations, the cap would apply to the corporation and not to share holders within the corporation.
9. Vessel License Use Caps. There is no limit on the number of licenses (or endorsements) which may be used on a vessel.
10. Changing Vessel Designations. If a vessel qualifies as a catcher processor, it may select a one time (permanent) conversion to a catcher vessel designation.
11. Implement a Skipper Reporting System. NMFS will implement a skipper reporting system which requires groundfish license holders to report skipper names, addresses, and service records.
12. Vessels Targeting Non-groundfish Species. Vessels targeting non-groundfish species that are allowed to land incidentally taken groundfish species without a Federal permit before implementation of the groundfish license program, will be allowed to continue to land bycatch amounts of groundfish without having a valid groundfish license. Additionally, vessels targeting sablefish and halibut under the IFQ program will continue to be allowed to retain bycatch amounts of groundfish species.

13. CDQ Vessel Exemption. Vessels < 125' obtained under an approved CDQ plan to participate in both CDQ and non-CDQ fisheries, will be allowed to continue to fish in the GOA groundfish fisheries without a license. If the vessel is sold outside the CDQ plan, the vessel will no longer be exempt from the rules of the license program.
14. Lost Vessels. Vessels which qualified for the moratorium and were lost, damaged, or otherwise out of the fishery due to factors beyond the control of the owner and which were replaced or otherwise reentered the fishery in accordance with the moratorium rules, and which made a landing any time between the time the vessel left the fishery and June 17, 1995, will be qualified for a general license and endorsement for that area.
15. Licenses Represent a use Privilege. The Council may alter or rescind this program without compensation to license holders; further, licenses may be suspended or revoked for (serious and/or multiple) violations of fisheries regulations.

Proposed Plan Amendment Language for Vessel License Limitation in The Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands

Amendment 5, effective (*insert the effective date of the license program*):

The first sentence in Section 8.1.2 would read:

Currently no Federal fishing permits are required for harvesting vessels, except as required by the License Limitation Program as described in Section 8.1.4, and regulated by 50 CFR (*insert part #*).

The paragraph contained in Section 8.1.4 would be deleted.

A new section 8.1.4.1 titled "Vessel License Limitation" would be added, and would read as follows:

8.1.4.1 Vessel License Limitation

Beginning on (*insert the effective date of the LLP*) a Federal Crab License is required on harvesting vessels (including harvester/processors) participating in the BSAI King and Tanner Crab fisheries. Vessels fishing in State waters will be exempt, as will vessels < 32'. The license limitation program will replace the vessel moratorium and will last until the Council replaces or rescinds the action.

8.1.4.1.1 Elements of the License Limitation Program

1. Nature of Licenses. General crab licenses will be issued for BSAI king and tanner crab fisheries covered under the FMP, with the following species/area endorsements:
 - a. Pribilof red and Pribilof blue king crab
 - b. *C. opilio* and *C. bairdi*
 - c. St. Matthew blue king crab
 - d. Adak brown king crab
 - e. Adak red king crab
 - f. Bristol Bay red king crab
 - g. Norton Sound red and Norton Sound blue summer king crab

Species/area combinations not listed above may be fished by any vessel that holds a valid Federal crab license regardless of the endorsements attached to the license, if those fisheries are open and the vessel meets all other State and Federal regulatory requirements.

2. License Recipients. Licenses will be issued to current owners (as of June 17, 1995) of qualified vessels, except in the Norton Sound summer red and blue king crab fisheries. Licenses for these fisheries would be issued to:
 - a. Individuals who held a State of Alaska Permit for the Norton Sound summer king crab fisheries and made at least one landing; or
 - b. Vessel owners as of June 17, 1995 in instances where a vessel was corporate owned, but operated by a skipper who was a temporary contract employee.

The owners as of this date must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. In cases where the vessel was sold on or before June 17, 1995, and the disposition of the license qualification history was not mentioned in the contract, the license qualification history would go with the vessel. If the transfer occurred after June 17, 1995, the

license qualification history would stay with the seller of the vessel unless the contract specified otherwise.

3. License Designations. Licenses and endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three vessel length classes (<60', ≥60' but < 125', or ≥ 125' LOA).
4. Who May Purchase Licenses. Licenses may be transferred only to "persons" defined as those "eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. Licenses may not be leased.
5. Vessel/License Linkages. Licenses may be transferred without a vessel, i.e., licenses may be applied to vessels other than the one to which the license was initially issued. However, the new vessel is still subject to the license designations, vessel upgrade provisions, 20% upgrade rule (defined in provision seven), and the no leasing provision. Licenses may be applied to vessels shorter than the "maximum LOA" regardless of the length of the vessel class designations. Vessels may also use catcher processor licenses on catcher vessels. However, the reverse is not allowed. It was the Council's intent that vessels be allowed to "downgrade".
6. Separability of General Licenses and Endorsements. General licenses may be issued for the Bering Sea /Aleutian Islands groundfish, Gulf of Alaska groundfish, and Bering Sea /Aleutian Islands crab fisheries. Those general licenses initially issued to a person based on a particular vessel's catch history are not separable and shall remain as a single "package". General licenses transferred after initial allocation shall remain separate "packages" in the form they were initially issued, and will not be combined with other general groundfish or crab licenses the person may own. Species/area endorsements are not separable from the general license they are initially issued under, and shall remain as a single "package," which includes the assigned catcher vessel/catcher processor and length designations.
7. Vessel Replacements and Upgrades. Vessels may be replaced or upgraded within the bounds of the vessel length designations and the "20% rule". This rule was originally defined for the vessel moratorium program. The maximum length over all (MLOA) with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to conduct directed fishing for groundfish covered under the license program, except as provided at § 676.4(d). The MLOA of a vessel with license qualification will be determined by the Regional Director as follows:
 - (a) For a vessel with license qualification that is less than 125' LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125', whichever is less; and
 - (b) For a vessel with license qualification that is equal to or greater than 125', the maximum LOA will be equal to the vessel's original qualifying length.

If a vessel upgrades under the "20% rule" to a length which falls into a larger license length designation after June 17, 1995, then the vessel owner would be initially allocated a license and endorsement(s) based on the vessel's June 17, 1995 length. Those licenses and endorsements could not be used on the qualifying vessel, and the owner would be required to obtain a license for that vessel's designation before it could be fished. Vessels in the Norton Sound summer king crab fisheries may upgrade more than 20% (as defined in the 20% rule) so long as the vessel does not exceed 32' LOA after the upgrade is complete.
8. License Ownership Caps. No more than five general crab licenses may be purchased or

controlled by a "person," with grandfather rights to those persons who exceed this limit in the initial allocation. Persons with grandfather rights from the initial allocation must be under the five general license cap before they will be allowed to purchase any additional licenses. A "person" is defined as those eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C. For corporations, the cap would apply to the corporation and not to share holders within the corporation.

9. Vessel License Use Caps. There is no limit on the number of licenses (or endorsements) which may be used on a vessel.
10. Changing Vessel Designations. If a vessel qualifies as a catcher processor, it may select a one time (permanent) conversion to a catcher vessel designation.
11. Implement a Skipper Reporting System. NMFS will implement a skipper reporting system which requires crab license holders to report skipper names, addresses, and service records.
12. CDQ Vessel Exemption. Vessels < 125' obtained under an approved CDQ plan to participate in both CDQ and non-CDQ target fisheries, will be allowed to continue to fish both fisheries without a license. If the vessel is sold outside the CDQ plan, the vessel will no longer be exempt from the rules of the crab license program.
13. Lost Vessels. Vessels which qualified for the moratorium and were lost, damaged, or otherwise out of the fishery due to factors beyond the control of the owner and which were replaced or otherwise reentered the fishery in accordance with the moratorium rules, and which made a landing any time between the time the vessel left the fishery and June 17, 1995, will be qualified for a general license and endorsement for that species/area combination.
14. Licenses Represent a use Privilege. The Council may alter or rescind this program without compensation to license holders; further, licenses may be suspended or revoked for (serious and/or multiple) violations of fisheries regulations.

14.4.1.2.2.1 CDQ Allocation.

CDQs will be issued for 7.5% of all BSAI crab fisheries that have a Guideline Harvest Level set by the State of Alaska. The program will be patterned after the pollock CDQ program (defined in section 14.4.11.6 of the BSAI groundfish FMP), but will not contain a sunset provision. Also, Akutan will be included in the list of eligible CDQ communities.

Comprehensive Rationalization ProgramLicense Limitation

The Council was asked to clarify their intent on a few components of the Groundfish and Crab License Limitation Program approved in June. Clarification of these issues was required so that the final analysis of the Council's program can proceed and NMFS can write the proposed regulations for submittal to the Secretary of Commerce. Results of those clarifications are listed in the sections that follow.

Definition of Current Vessel Owners: The Council confirmed their intent to issue licenses to the current owner of a vessel as of June 17, 1995. The owner as of June 17, 1995, would have to be eligible to document a fishing vessel in the U.S. Further, the Council advised NMFS to recognize written transfers or reservations of catch history when issuing licenses, to the extent practicable.

The Council also clarified their intent regarding vessel transfers which did not specify the disposition of catch history and fishing rights: if the vessel was sold on or before June 17, 1995, the catch history and license qualification would be transferred along with the vessel. If the sale occurred after June 17, 1995, the catch history and license qualification would be retained by the seller of the vessel. Again, these are the standards which will be applied in the absence of written agreements which specify disposition of fishing rights.

In any case in which there is a dispute concerning the disposition of fishing history or license qualification, NMFS will not issue a license until the dispute is resolved by the parties involved.

Lost Vessels: The Council reconfirmed their June decisions regarding lost vessels. Specifically, the Council intended that vessels qualify for groundfish endorsements between January 1, 1992 and June 17, 1995 and crab endorsements between January 1, 1992 and December 31, 1994. Several letters had been received asking the Council to reconsider these dates because the moratorium allows vessel owners two years after the date of implementation to qualify for moratorium permits. It was the Council's feeling that enough time had elapsed since the final decision on the moratorium that vessel owners had ample time to re-enter the fishery and earn endorsements under the Groundfish and Crab License Limitation Program.

The Council also clarified its action in June regarding hardship provisions in the License Program for vessels which were lost, sunk or otherwise out of the fishery following qualifying landings in the Base Qualifying Period. These vessels, or their replacements, may qualify for an area endorsement with one landing in the Endorsement Qualifying Period, but only if the vessel could not have otherwise qualified.

Crab Crossover Vessels and the Relationship Between Base and Endorsement Qualifying Periods: The Council clarified its intent regarding "crab crossover" vessels: BSAI crab landings in the base qualifying period would be treated in the same manner as BSAI groundfish landings. For example, endorsements for GOA groundfish can only be earned if the vessel also had base period landings of GOA groundfish. A summary of the relationship between landings in the base and endorsement qualifying periods and eligibility of vessels to receive area endorsements is shown in the table below.

Dec. 1, 1997

Mr. Rick Lauber, Chairman
Dr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
Post Office Box 103136
Anchorage, Alaska 99510

Re: SEO-EGOA Trawl Sablefish Allocation

Dear Rick,

As the Council begins discussion of how to deal with the 5% of the SEO sablefish TAC that was allocated to trawlers under Amendment 14, it should review the LLP debate from the June 1995 meeting. At that time the Council voted 7-4 to compensate trawl vessels who would have otherwise qualified for trawl licenses in the SEO. (See attached transcript of that portion of the debate)

The wording of the agenda item for this issue implies that the action to be undertaken is to reallocate the sablefish to longline gear. However, there are other alternatives:

- Allocate the 5% directly to trawl vessels receiving fixed gear endorsements in SEO, either as ITQ or as a mini-derby fishery for that subset of license holders.
- Increase the trawl allocation in WYAK by an amount equal to the SEO trawl allocation. This would have the effect of slightly reducing the size quota holding for WYAK longliners. In turn the 5% SEO sablefish quota would be proportionately allocated to those WYAK longliners as SEO quota. It would make sense to then allow the recipients of the 5% SEO trawl sablefish quota a one time opportunity to transfer and consolidate those small amounts without the full constraints of the block provisions.

It would be unfair to simply reallocate the trawl quota to SEO ITQ holders, as a windfall gift. The Council has made a commitment to compensate the trawl license holders who will not receive a trawl gear endorsement. Compensating them with ITQ in the Bering Sea is not a reasonable alternative. First, because there is now a moratorium on new ITQ programs, and secondly because that would be compensation at the expense of Bering Sea trawlers who gained nothing by the SEO fixed gear only provision. Ms. Behnken made this point well during the LLP debate, in the following quote:

Behnken: "...anybody who had earned a license east of 140 would still get that license, but it would be designated hook-and-line. If we compensate people, I'm not quite sure how you do that. I mean you still have the opportunity to fish hook-and-line and I recognize some of those species are pretty difficult to catch. So far, we haven't really figured out how to do it ..."

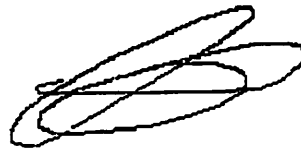
Ms. Behnken statement makes clear that the fixed gear only provision of SEO license endorsements was not intended as a fish grab. Trawlers who qualify for such licenses were meant to continue to have access to those species they were previously allowed to fish. This would, of course, include the 5% of the sablefish TAC that was directly allocated to trawlers under Amendment 14.

The Council's intent can best be met by either a direct allocation of sablefish ITQ to those displaced trawlers, or by a TAC "swap" with WYAK where those trawlers LLP licenses will continue to have a trawl gear endorsement. *This would be the most reasonable and fair approach to dealing with both the trawl sablefish allocation and compensation issues.*

Thank you for your consideration of these comments.

Sincerely yours,

dave fraser

A handwritten signature in black ink, appearing to read "Dave Fraser", written in a cursive style.

F/V Muir Milach
PO Box 771
Port Townsend, Washington 98368

Attachment from the June 1995 LLP debate transcript

Samuelsen: I'd like to make a motion to allow compensation once an ITQ program is in place to compensate the displaced boats of the Gulf and Bering Sea.

Lauber: Could you restate that again?

Samuelsen: *I'd like to offer a compensation package for the displaced boats in the Gulf on this motion that just passed the Council and that would be to compensate those vessels that are displaced that qualify under license limitation program* and once we go to an ITQ program that those vessels will be compensated in the Gulf for their loss of fishing opportunity or in the Bering Sea for the loss of fishing opportunity in the Gulf.

Lauber: Okay, I understand it. Is there a second to that motion?

Tillion: Second.

Lauber: Would you care to speak to your motion?

Samuelsen: Although I voted for it, I wasn't totally convinced through public testimony we've heard that on reports of bycatch the trawls fisheries are 100% observed, the other boats are not. Under the license limitation program, it was pretty convincing to me that we might be increasing the problem in the Gulf by allowing more boats in than are presently participating in there. Staff has presented data that showed two vessels were in there. I think we've set precedent. We've compensated the CDQ groups in the halibut fishery; I believe that compensation was in the Bering Sea from the Gulf so I think we've set the precedent.

Lauber: Any further discussion?

Mace: We're assuming of course that we're going to have an IFQ program. *This is going to bite someone else. You're taking away from someone to give to them* and I'm not sure that this is the appropriate time to cover this.

Tillion: As the second, I'd like to speak in favor of it because if we don't flag it fairly early, we might not go to an ITQ program. We might stay in limited entry in which case it doesn't come up, *but it should be known that those people that were displaced have the right to some compensation in the Bering Sea for being displaced from the Gulf. I think it's only fair to flag it now.* I don't think it's a big item, but I think it gives a little security to some of those that are being squeezed at this time. I think it's a good thing to have.

Pereyra: *I think this certainly is a noble gesture, but I'm not so sure if it's really going to be that effective.* For example, shortrakers, rougheyes, northern rockfish, so forth, you'll find those in the Bering Sea for example. So, I have a difficulty with seeing with how you come up with some kind of compensation scheme that is transferable that way. I do think it's a noble gesture and maybe it's one to make us feel better that we've now, after we've hurt a particular group, we're having some pangs of our action, so we want to do something to give them some help. I think it's a nice idea, but I think we should have thought of that before we voted in the last motion and maybe made some adjustments that would have been more appropriate to take into consideration some of their needs.

Benton: *I have no problem with the motion and I would support the motion.* The only question I have is whether or not we want to do that at this time or whether we want to do it towards the end under General Provisions because it strikes me that we may have some discussion of the relationship of licenses to future actions and what that all means. With that question just sort of hanging there, I don't expect an answer. I guess I'd vote in favor of the motion.

Samuelsen: I have no problems waiting until General Provision time and institute that.

Lauber: Yeah, that's where it would be placed anyway. I think Ms. Behnken is next.

Behnken: If we're going to withhold the discussion . . . I guess I'd just raise one question and we're coming back to this, people are going to be thinking about it, but the motion we passed on 9,000 said that *anybody who had earned a license east of 140 would still get that license, but it would be designated hook-and-line*. If we compensate people, I'm not quite sure how you do that. *I mean you still have the opportunity to fish hook-and-line and I recognize some of those species are pretty difficult to catch*. So far, we haven't really figured out how to do it . . . maybe pots or whatever . . . but I mean if we're coming back to that it's something we could be thinking about.

Lauber: Let me ask Counselor a question. I don't know that the motion was worded this way, but it's my understanding *the effect of this would be to notice the public, so to speak, that it would be the Council's intention to do this* when we at such time as we adopt an individual fishing quota in the Bering Sea. However, that could only be that. Wouldn't the Council and the Secretary at that time have the authority to do or not do this?

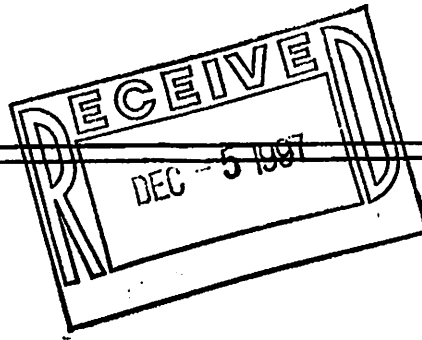
Lindeman: Mr. Chairman, maybe if the Council just said that they would consider whether or not to provide compensation. *The public could interpret maybe a statement that the Council intends, that the Council is somehow committing themselves even though you'd have to have a record, maybe analysis of how many vessels etcetera*. If the Council doesn't want to bind itself or the Secretary then you might just say "consider."

Lauber: You have a different Council and my concern at this point is that we don't have a record built for it and if you would accept that as intent that the Council would consider at such time as it adopts an ITQ system in the Bering Sea that consideration be given for persons displaced. I would assume that the answer to that is like we've done before, we've converted one fish into another fish many times. That could be done even though it would not be the same species, it could be a similar value or something like that. Anyway if that's acceptable then the motion would be to that effect that Council at some future time would consider doing it. Is there any further discussion on the motion? Is there any objection to the motion? Okay, better call the roll.

Pautzke:

Fluharty	No
Hegge	Yes
Mace	No
Collinsworth	Yes
Pereyra	No
Samuelsen	Yes
Tillion	Yes
Barker	No
Behnken	Yes
Benton	Yes
Lauber	Yes

Pass.

Three Rivers, Inc. of Anacortes910 District Line Rd.
Burlington, Wa. 98233Phone 360-757-4544
Fax 360-757-8063

December 05, 1997

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Ak. 99501-2252

Dear Mr. Lauber,

Our correspondence to the council in the past regarding our qualifications for the Pacific Cod fishery in the Gulf of Alaska seems to be slightly misunderstood. We are not looking for the wording of the law to be changed, we are asking for special consideration for our situation only.

We were fishing cod prior to our loss and after we replaced the Lady Selket, but due to the timing of our loss February 4, 1994, we were unable to make the necessary deliveries to qualify for the limited entry permit.

We were not able to purchase a vessel that was already in the fishery. The Sea Warrior was a utility vessel that required a major refit. We did not have the funds to do all that was necessary at once. We did what was needed to get the vessel ready for the 1995 Opilio season. At the conclusion of that season the Sea Warrior came back to Anacortes to Lovric's shipyard to have the fish holds foamed and glassed and refrigeration installed so we would not lose our very valuable salmon tendering contract which started June 15, 1995.

Based on our past and present fishing of Pacific Cod we feel the one delivery needed for us to qualify would have been accomplished had we not suffered the loss of the Lady Selket Feb. 4, 1994.

Sincerely,

Mike and Susan Goad
1212 31st St.
Anacortes, WA. 98221
360-293-3005

11-15-97
EXPO EDITION

Joe Macinko

THE RESPONSE TO OUR LATEST QUIK NEWS HAS BEEN EXCEPTIONAL. IFQ BUYERS ARE CONTINUING TO COME OUT OF THE WOODWORK AND SELLERS ARE GETTING SOME OF THE HIGHEST PRICES EVER. WITH THE SEASON COMING TO AN END, AND PLANNING ALREADY STARTED FOR NEXT YEAR, WE EXPECT THE ACTIVITY TO CONTINUE. AREA 3B AND 4A QUOTA CONTINUES TO BE HARD TO FIND AND IS PRICED ACCORDINGLY. THERE IS MUCH SPECULATION ON HOW QUOTAS WILL GO OUT WEST.

NPFMC NEWS: JUST WHEN YOU THOUGHT THE LICENSE LIMITATION PROGRAM WAS DONE AND ON ITS WAY TO IMPLEMENTATION, ALREADY THERE IS TALK OF PRESSURE FOR CHANGES IN THE ENDORSEMENT QUALIFICATIONS.

WE ARE STARTING TO SEE THE FALLOUT FROM THE QUOTA CUTS IN THE LOWER 48 COASTAL GROUND FISH FISHERIES. THERE IS NEW INTEREST IN GOA MORATORIUM PERMITS WHICH QUALIFY FOR LICENSE LIMITATION IN CG AND WG AREAS. THIS NEW DEMAND HAS FUELED CONCERNS ABOUT TOO MANY LONGLINE RIGHTS BEING BOUGHT FOR DRAGGERS--NOW ALLOWED IN THE CURRENT LLP. WE EXPECT THE DEMAND FOR RIGHTS TO INCREASE IN ANTICIPATION OF POSSIBLE ENDORSEMENT RESTRICTIONS WHICH WOULD STOP TRANSFERS FROM ONE GEAR TYPE TO ANOTHER. EVEN THOUGH THE CRAB BUY BACK IS BEING IMPLEMENTED, THERE IS TALK OF FURTHER LIMITING THE ENDORSEMENT QUALIFYING PERIOD FOR CRAB AS WELL. IF YOU HAVE RIGHTS YOU'VE BEEN THINKING OF SELLING, GIVE US A CALL FOR THE LATEST VALUES.

IF YOU SEE ANYTHING OF INTEREST, CONTACT US. IF THERE IS A SPECIFIC FISHERY THAT YOU WOULD LIKE INFO ON, LET US KNOW AND WE WILL ADDRESS IT IN A FUTURE EDITION OR DISCUSS IT WITH YOU OVER THE PHONE.

E-MAIL: PMTMASTER@AOL.COM

INTERNET: www.permitmaster.com

SEE US AT "FISH EXPO SEATTLE" - BOOTH #1233