

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Acting Executive Director

DATE: January 31, 2001

SUBJECT: Crab Rationalization

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Receive Committee Report

BACKGROUND

The Council's newly appointed Crab Rationalization Committee had an organizational meeting on January 11 in conjunction with our special January Council meeting. Meeting minutes are attached under Item C-6(a). The Committee established ground rules and a meeting schedule, and are planning to meet February 15-16 in Seattle (at the AFSC), and March 15-16 in Anchorage (location pending). They requested that staff provide a summary of the minutes of previous ad-hoc industry committee meetings as a good starting point for this Committee's work. Staff also have drafted a summary of analytical issues to be addressed when designing elements and options for either fishery cooperatives or IFQ programs. The Committee is striving to complete their task prior to the April Council meeting, and provide the Council a recommended suite of alternatives, elements, and options at that time for formal analysis.

Related to this effort is the recent legislation regarding rationalization for the crab fisheries and GOA groundfish fisheries, and particularly the legislated buyback program for crab. The language from the Congressional legislation is included under Item C-6(b), and NMFS staff working on the buyback are on hand to provide further explanation of the process. Of particular note is the language requiring action by the Council, by February 16, to recommend to the Secretary and the State of Alaska that any increased harvest opportunities resulting from a buyback accrue to all remaining AFA and non-AFA vessels proportionally. In other words, the AFA crab harvest sideboards adopted by the Council, and implemented by the State, would need to be adjusted to reflect that Congressional direction.

As an example, the following language could suffice, for red king crab: *Those AFA vessels that hold a BBRKC endorsement and remaining in the fishery after the buyback shall be capped at their 5-year (91-97, excluding 94 and 95) weighted average share relative to the catch of the post-buyback fleet during those years. These vessels shall be managed in the aggregate...*

This could be accomplished by a Council motion for a letter to the Board of Fish to this effect.

Crab Rationalization Committee Summary

(January 11, 2001)

The Council's recently appointed Crab Rationalization Committee met in Seattle on January 11 in conjunction with the Council's special January meeting to address Steller sea lion related management measures. This was an organizational meeting with the following members in attendance:

Dave Hanson, Chair	Tom Casey	Terry Cosgrove
John Garner	Don Giles	John Iani
Frank Kelty	Linda Kozak	Brent Paine
Gary Painter	Joe Plesha	Jeff Steele
Arni Thomson	Karen Wood-Dibari	Dale Schwarzmiller (for John Hickman)
Steve Minor (for Simeon Swetzof)		

Chris Oliver from the Council staff and Herman Savikko from ADF&G also attended.

Dr. Hanson opened the meeting by reviewing the Council's Draft Problem Statement and the direction from the Council for the Committee's task - essentially, to develop alternatives, elements, and options for crab rationalization which would be forwarded to the Council for formal analysis. Pursuant to Council intent, the Committee was also provided a summary from the NRC report 'Sharing the Fish', which is intended to assist the Committee in its development of elements and options with regard to IFQ type programs. Minutes from the Council's October and December 2000 discussions of crab rationalization were also provided. The Committee briefly discussed the recent Congressional language regarding the legislatively mandated capacity reduction program, and the extension of the moratorium on IFQ type programs for another two years. The Committee does not view that moratorium extension as prohibiting their work in developing options to forward to the Council. In fact, consistent with that legislation, the Council would at some point forward a formal analysis of those options to Congress for further consideration.

The Committee discussed and recognized the importance of the work previously done by the ad-hoc industry Committee as a starting point for further development. While the Committee's charge is not to develop a Preferred Alternative for the Council, there was a consensus that they should strive for as much definition as possible in program design, to facilitate both the staff analysis and the Council's deliberations. Because of the economic state of the crab fisheries, it was noted that the industry's perspective with regard to the \$50 million loan for the buyback could be affected by the timelines and commitment to rationalization; i.e., the extent to which the industry knows the ultimate program design, and knows what is likely in store for the crab fisheries, the better they will be able to respond to a buyback program referendum involving repayment of the loan.

While formal analysis of downstream impacts of options can be useful in shaping those options, the Committee feels that it can accomplish its task without a great degree of technical analysis. The Committee did request staff to compile a summary of the previous ad-hoc Committee's work for reference, and to compile a draft outline of data needs, scope of economic issues, and analytical outline for a formal analysis. Staff indicated they would provide this in time for the next Committee meeting, tentatively scheduled for February 15-16 in Seattle. Another meeting is tentatively scheduled for March 15-16 in Anchorage. The first order of business at the next meeting will be to prioritize agenda items for Committee discussion. The Committee expressed a goal of attempting to complete their work by the April Council meeting.



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Capacity Reduction Program for BSAI Crab Fisheries

Excerpted from the Congressional Record - House. H.R. 4577, Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 2001. House of Representatives - December 15, 2000.

SEC. 144.

... (b) Notwithstanding sections 303(d)(1)(A) and 303(d)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this section, ...

(2)(a)... The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner.

(d)(1) The Secretary of Commerce (hereinafter "the Secretary") shall, after notice and opportunity for public comment, adopt final regulations not later than May 1, 2001 to implement a fishing capacity reduction program for crab fisheries included in the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (hereinafter "BSAI crab fisheries"). In implementing the program the Secretary shall—

- (A) reduce the fishing capacity in the BSAI crab fisheries by permanently reducing the number of license limitation program crab licenses;
- (B) permanently revoke all fishery licenses, fishery permits, area and species endorsements, and any other fishery privileges, for all fisheries subject to the jurisdiction of the United States, issued to a vessel or vessels (or to persons on the basis of their operation or ownership of that vessel or vessels) for which a BSAI crab fisheries reduction permit is surrendered and revoked under section 6011(b) of title 50, Code of Federal Regulations;
- (C) ensure that the Secretary of Transportation is notified of each vessel for which a reduction permit is surrendered and revoked under the program, with a request that such Secretary permanently revoke the fishery endorsement of each such vessel and refuse permission to transfer any such vessel to a foreign flag under paragraph (5);
- (D) ensure that vessels removed from the BSAI crab fisheries under the program are made permanently ineligible to participate in any fishery worldwide, and that the owners of such vessels contractually agree that such vessels will operate only under the United States flag or be scrapped as a reduction vessel pursuant to section 600.1011(c) of title 50, Code of Federal Regulations;
- (E) ensure that vessels removed from the BSAI crab fisheries, the owners of such vessels, and the holders of fishery permits for such vessels forever relinquish any claim associated with such vessel, permits, and any catch history associated with such vessel or permits that could qualify such vessel, vessel owner, or permit holder for any present or future limited access system fishing permits in the United States fisheries based on such vessel, permits, or catch history;

(F) not include the purchase of Norton Sound red king crab or Norton Sound blue king crab endorsements in the program, though any such endorsements associated with a reduction permit or vessel made ineligible or scrapped under the program shall also be surrendered and revoked as if surrendered and revoked pursuant to section 600.1011(b) of title 50, Code of Federal Regulations;

(G) seek to obtain the maximum sustained reduction in fishing capacity at the least cost by establishing bidding procedures that—

(i) assign a bid score to each bid by dividing the price bid for each reduction permit by the total value of the crab landed in the most recent five-year period in each crab fishery from 1990 through 1999 under that permit, with the value for each year determined by multiplying the average price per pound published by the State of Alaska in each year for each crab fishery included in such reduction permit by the total pounds landed in each crab fishery under that permit in that year; and

(ii) use a reverse auction in which the lowest bid score ranks first, followed by each bid with the next lowest bid score, until the total bid amount of all bids equals a reduction cost that the next lowest bid would cause to exceed \$100,000,000;

(H) not waive or otherwise make inapplicable any requirements of the License Limitation Program applicable to such crab fisheries, in particular any requirements in sections 679.4(k) and (l) of title 50, Code of Federal Regulations;

(I) not waive or otherwise make inapplicable any catcher vessel sideboards implemented under the American Fisheries Act (AFA), except that the North Pacific Fishery Management Council shall recommend to the Secretary and to the State of Alaska, not later than February 16, 2001, and the Secretary and the State of Alaska shall implement as appropriate, modifications to such sideboards to the extent necessary to permit AFA catcher vessels that remain in the crab fisheries to share proportionately in any increase in crab harvest opportunities that accrue to all remaining AFA and non-AFA catcher vessels if the fishing capacity reduction program required by this section is implemented;

(J) establish sub-amounts and repayment fees for each BSAI crab fishery prosecuted under a separate endorsement for repayment of the reduction loan, such that—

(i) a reduction loan sub-amount is established for each separate BSAI crab fishery (other than Norton Sound red king crab or Norton Sound blue king crab) by dividing the total value of the crab landed in that fishery under all reduction permits by the total value of all crab landed under such permits in the BSAI crab fisheries (determined using the same average prices and years used under subparagraph (G)(i) of this paragraph), and multiplying the reduction loan amount by the percentage expressed by such ratio; and

(ii) fish sellers who participate in the crab fishery under each endorsement repay the reduction loan sub-amount attributable to that fishery; and

(K) notwithstanding section 1111(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f(b)(4)), establish a repayment period for the reduction loan of not less than 30 years.

(2)(A) Only persons to whom a non-interim BSAI crab license and an area/species endorsement have been issued (other than persons to whom only a license and an area/species endorsement for Norton Sound red king crab or Norton Sound blue king crab have been issued) for vessels that—

(i) qualify under the License Limitation Program criteria set forth in section 679.4 of title 50, Code of Federal Regulations, and

(ii) have made at least one landing of BSAI crab in either 1996, 1997, or prior to February 7 in 1998, may submit a bid in the fishing capacity reduction program established by this section.

(B) After the date of enactment of this section—

(i) no vessel 60 feet or greater in length overall may participate in any BSAI crab fishery (other than for Norton Sound red king crab or Norton Sound blue king crab) unless such vessel meets the requirements set forth in subparagraphs (A)(i) and (A)(ii) of this paragraph; and

(ii) no vessel between 33 and 60 feet in length overall may participate in any BSAI crab fishery (other than for Norton Sound red king crab or Norton Sound blue king crab) unless such vessel meets the requirements set forth in sub-paragraph (A)(i) of this paragraph. Nothing in this paragraph shall be construed to affect the requirements for participation in the fisheries for Norton Sound red king crab or Norton Sound blue king crab. The Secretary may, on a case by case basis and after notice and opportunity for public comment, waive the application of sub-paragraph (A)(ii) of this paragraph if the Secretary determines such waiver is necessary to implement one of the specific exemptions to the recent participation requirement that were recommended by the North Pacific Fishery Management Council in the record of its October, 1998 meeting.

(3) The fishing capacity reduction program required under this subsection shall be implemented under this subsection and sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)–(e)). Section 312 and the regulations found in Subpart L of Part 600 of title 50, Code of Federal Regulations, shall apply only to the extent such section or regulations are not inconsistent with or made inapplicable by the specific provisions of this subsection. Sections 600.1001, 600.1002, 600.1003, 600.1005, 600.1010(b), 600.1010(d)(1), 600.1011(d), the last sentence of 600.1011(a), and the last sentence of 600.1014(f) of such Subpart shall not apply to the program implemented under this subsection. The program shall be deemed accepted under section 600.1004, and any time period specified in Subpart L that would prevent the Secretary from complying with the May 1, 2001 date required by this sub-section shall be modified as appropriate to permit compliance with that date. The referendum required for the program under this subsection shall be a post-bidding referendum under section 600.1010 of title 50, Code of Federal Regulations.

(4)(A) The fishing capacity reduction program required under this subsection is authorized to be financed in equal parts through a reduction loan of \$50,000,000 under sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and \$50,000,000 which is authorized to be appropriated for the purposes of such program.

(B) Of the \$1,000,000 appropriated in section 120 of Division A of Public Law 105–277 for the cost of a direct loan in the Bering Sea and Aleutian Islands crab fisheries—

(i) \$500,000 shall be for the cost of guaranteeing the reduction loan required under sub-paragraph (A) of this paragraph in accordance with the requirements of the Federal Credit Reform Act; and

(ii) \$500,000 shall be available to the Secretary to pay for the cost of implementing the fishing capacity reduction program required by this subsection.

(C) The funds described in this subsection shall remain available, without fiscal year limitation, until expended. Any funds not used for the fishing capacity reduction program required by this subsection, whether due to a rejection by referendum or otherwise, shall be available on or after October 15, 2002, without fiscal year limitation, for assistance to fishermen or fishing communities.

(5)(A) The Secretary of Transportation shall, upon notification and request by the Secretary, for each vessel identified in such notification and request—

(i) permanently revoke any fishery endorsement issued to such vessel under section 12108 of title 46, United States Code; and

(ii) refuse to grant the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for the placement of such vessel under foreign registry or the operation of such vessel under the authority of a foreign country.

(B) The Secretary shall, after notice and opportunity for public comment, adopt final regulations not

later than May 1, 2001 to prohibit any vessel for which a reduction permit is surrendered and revoked under the fishing capacity reduction program required by this section from engaging in fishing activities on the high seas or under the jurisdiction of any foreign country while operating under the United States flag.

(6) The purpose of this subsection is to implement a fishing capacity reduction program for the BSAI crab fisheries that results in final action to permanently remove harvesting capacity from such fisheries prior to December 31, 2001. In implementing this subsection the Secretary is directed to use, to the extent practicable, information collected and maintained by the State of Alaska. Any requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, or any Executive Order that would, in the opinion of the Secretary, prevent the Secretary from meeting the deadlines set forth in this sub-section shall not apply to the fishing capacity reduction program or the promulgation of regulations to implement such program required by this subsection. Nothing in this subsection shall be construed to prohibit the North Pacific Fishery Management Council from recommending, or the Secretary from approving, changes to any Fishery Management Plan, License Limitation Program, or American Fisheries Act provisions affecting catcher vessel sideboards in accordance with applicable law: Provided, That except as specifically provided in this subsection, such Council may not recommend, and the Secretary may not approve, any action that would have the effect of increasing the number of vessels eligible to participate in the BSAI crab fisheries after March 1, 2001.

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HEUKER BROS., INC.
62975 NE Tumalt Road
Cascade Locks, OR 97014
(541) 374-8255 • Fax (541) 374-8553

January 31, 2001

VIA FACSIMILE 907-271-2817

David Benton, Chairman
NPFMC Council Members
605 West 4th Ave, Ste 306
Anchorage, AK 99501-2252

RECEIVED
JAN 31 2001

N.P.F.M.C

**SUBJECT: LLP Program and the Capacity Reduction Program
F/V Sandra Five ADFG #70770**

We would like to address the issue of the Capacity Reduction Program recently approved by Congress. This legislation applies retroactively (i.e., a current replacement vessel is now ineligible) and prospectively (i.e., any vessel lost in the future cannot be replaced). It was our understanding that anyone with a valid LLP permit would be issued a Certificate of Vessel Eligibility based on the approved legislation.

Based on the previous regulations (and direction) of the NMFS Restricted Access Management division, we purchased fishing rights from a sunken vessel and proceeded to construct the *F/V Sandra Five*. Halfway through construction, we were informed that we weren't eligible because of a change in the recency requirements. We subsequently proceeded to work with the Council to adopt and implement Amendment 10 and the four exemptions contained therein. After an extensive investment of time and money (nearly \$2 million), we were under the assumption that after we received the LLP, we would then be permanently eligible for the crab fishery with our vessel.

It appears that NMFS Restricted Access Management (RAM) division's interpretation of the new congressional buyback language is more restrictive than the Council's original intent. Our vessel qualified under the Council's intent by recognizing combined history and replacement provisions provided for by the Council (under Amendment 10), in contrast to the RAM division's interpretation which fails to include the combined history exception for crab vessels and a replacement provision for vessels that are lost. By a literal interpretation of the new Congressional buyback language, RAM is not following the same logic and intent as the Council, thus not issuing permanent licenses to vessels relying on combined histories.

We do not believe it was Congress' intent to ignore the Council's previously-approved actions. We request the Council contact the appropriate government offices and agencies to correct this misinterpretation and restore the vessel's eligibility.

Sincerely,

HEUKER BROS., INC.


Chris Heuker, President

St. George Marine Inc.
Patrick Dwyer
6439 NE 188th St.
Kenmore, WA 98028
425-487-1210

1/30/01

Phil Smith
Restricted Access Management
National Marine Fisheries Service
Box 21668
Juneau, AK 99802-1668
Fax 907-586-7354

RECEIVED

JAN 31 2001

N.P.F.M.C

Certificate of Eligibility

Dear Mr. Smith

On January 2, 2001 St. George Marine, Inc. was issued an Interim Certificate of Vessel Eligibility for the LLP License No LLPC3379. The certificate expires on August 31 2001. When it expires we will no longer be able to use our fishing vessel Jennifer A., ADF&G Number 35277, to fish our LLP permit as the rules now state with out a Permanent Vessel Eligibility Certificate.

As an informational recap, here is a brief history of the F/V Jennifer A. The F/V Jennifer A. is the replacement vessel for the F/V St. George, (ADF&G Number 38746). The F/V St. George sank in January 4, 1992 in a storm while getting ready to fish for Opilio crab. Sadly there were lives lost. The F/V St. George qualified under the General Qualifying Period and Unavoidable and Unforeseeable Circumstances (50 CFR 679.A.4 (6) (D)), these rights where transferred to the F/V Jennifer A in 1994. The first crab harvest for the Jennifer A. which was extensively rebuilt, was in January of 1995 as there was no Bristol Bay King Crab fishery in 1994. The Jennifer A. has fished every crab fishery from 1995 to the present. (In your LLP records for LLPC3379 / ADF&G Number 38746 you have all this information.)

We have followed all rules and fishing requirements made by RAM, the North Pacific Fisheries Management Council and we have made decisions and investments based on these rules. The BSAI Capacity Reduction Program disqualifies the F/V Jennifer A. from fishing by going back in history and changing the rules. We would dearly love to go back and change the history of the F/V St. George but we cannot. If the F/V Jennifer A. is denied a Certificate of Eligibility, we have no other option but to appeal this decision.

We urge RAM, the North Pacific Fisheries Management Council, and Senator Stevens to include language in the Reduction Program Legislation that is similar to what is said in 50CFR 679.A.4. Under Unavoidable and Unforeseeable Circumstances and also what is stated in LLP Information/ Instructions - September 1999 in regards to retired, sunk or destroyed fishing vessels like the F/V St. George - F/V Jennifer. A.

Sincerely

Patrick Dwyer and Jennifer Gore Dwyer

CC: NPFMC
Bill Woolf
Dave Russell

Kevin Suydam
F/V Lady Alaska
PO Box 980
Kodiak, Alaska 99615

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JAN 31 2001

N.P.F.M.C

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

Jan. 30, 2001

Re: LLP qualifications and Capacity Reduction Buyback

Mr. Dave Benton-Chairman & Mr. Clarence Pautzke-Director;

I am submitting this letter in reference to LLP license qualifications under the new Capacity Reduction Buyback plan. It appears there is a difference in interpretation by the RAM division to recognize vessels as it relates to purchase, transfer, and combining of vessel histories per the Council's intent and Council approval. One of these vessels is my vessel the "Lady Alaska", which was a multi-million dollar investment of vessel, gear, and fishing rights based on the Councils' actions to allow replacement of vessels per the Moratorium guidelines.

The first approved Council action is purchase and transfer of Moratorium qualified fishing rights. It was permitted to purchase Moratorium rights and history to allow a new vessel to enter the fishery, thus removing the old vessel from the fishery and allowing the new vessel to continue in place of the vessel that was removed. This moratorium period is now renamed the general qualifying period and is one and the same. These Moratorium replacements need to be recognized for vessels that bought Moratorium rights.

The second approved Council action is the Amendment 10 exception to the one vessel=one history=one license rule, for histories to be combined provided it was acquired by Oct 10, 1998. This states that purchased histories and actual vessel participation histories are to be combined together to yield one LLP and catch history. These combined histories need recognition also.

We ask that you please contact the appropriate Government offices and agencies to inform them of the Council's approved actions and intent. We also do not believe it was the Congress' intent to disregard the Council's approved actions. Thank you.

Respectfully submitted,

Kevin Suydam
Kevin Suydam

Debra D. Inc.16559 Kamb Rd.
Address Line 2
Mt. Vernon Wa. 98273
U.S.A.Phone 360-708-2656
Fax 360-428-7096

January 31, 2001

David Benton, Chairman
NPFMC Council Members605 West 4 th Avenue Suite 306
Anchorage, AK 99501-2252

907-271-2817

Dear Mr. Benton and Council Member,

RECEIVED

JAN 31 2001

N.P.F.M.C

I would like to bring attention of the NPFMC a situation the has transpired regarding the new Capacity Reduction Program. We believe this legislation include our vessel by recognizing combined history and replacement provisions provided for by the Council, in contrast to the RAM division's interpretation which fails to include the combined history exception for crab vessels and a replacement provision for vessel that are lost or otherwise removed from service.

I have made extensive investments of vessels, gear and fishing rights based on actions the Council approved, as was the Council intent.

It appears that RAM, by literal interpretation of the Congressional buyback language, is not following the same logic and intent as the Council, thus not issuing permanent licenses to these vessels relying on combined histories.

In my case I have a vessel, the Debra D that was built in 91 but due to financial difficulty I couldn't get ready for crab until 1993. I made a deal with George Johnson on the Ocean Challenger to purchase his fishing rights which I did with anticipation of the Councils upcoming rulings. I have been given a permit that is transferable for the Debra D and have fished it since 1993 in all the seasons except for a fire in 97 in which is just missed oppies not king crab. Under RAM interpretation that fishing history does not count toward the Certificate of Eligibility even know I have been issued a permanent LLP.

We do not believe it was the Congress intent to ignore the Council's approved actions. We request that the Council please contact the appropriate government offices and agencies to correct this misinterpretation.

If Debra D is not allowed to continue to fish I will be forced into bankruptcy and 10 families will be without jobs just because I followed the rules laid out to me

Sincerely



Brad L. Warren

Tim Kennedy
7643 NE 112th St
Kirkland, WA 98034

January 31, 2001

David Benton, Chairman
NPFMC Council Members
605 West 4th Avenue Suite 306
Anchorage, AK 99501-2252

RECEIVED
JAN 31 2001
N.P.F.M.C

RE: LLP Program and the Capacity Reduction Program

Dear Mr. Benton and Council Members,

I wish to bring to the attention of the NPFMC a situation that has recently transpired regarding the new Capacity Reduction Program. We believe prior legislation includes our vessels by recognizing combined history and replacement vessels provided for by the Council, in contrast to the RAM division's new interpretation of the Capacity Reduction Program in which RAM fails to include the combined history exception for crab vessels and a replacement provision for vessels that are lost or otherwise removed from service.

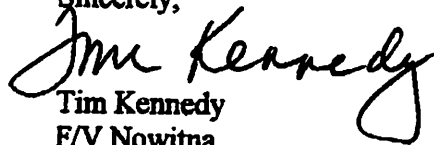
Many of us have invested millions of dollars for vessels, gear and fishing rights based on actions the Council approved, and such investments conform to the Council's intent.

It appears that RAM, by a literal interpretation of the new Congressional buyback language, is not following the same logic and intent as the Council, thus not issuing permanent licenses to these vessels relying on combined histories and ignoring the Amendment 10 exception to the one vessel=one history=one license rule

My vessel, the "Nowitna" has fished since 1980 and was lost in 1999. Under RAM's interpretation, I cannot replace this boat even though I have a LLP permit. I also have the "Windy Bay" that I began fishing in 1990/91, retired it in 1994, retained all the fishing rights and history, and replaced it with a new "Windy Bay". The new boat has not received a Certificate of Eligibility, although it has a permanent LLP License. In addition, I built the "Mystery Bay" in 1994 after obtaining Moratorium fishing history (per the Council's guidelines) and have fished that boat continuously since 1995. Again, under the RAM interpretation, that fishing history does not count toward the Certificate of Eligibility, although it has issued a permanent LLP.

We do not believe it was the intent of Congress to ignore the Council's approved actions. We request that the Council please contact the appropriate government offices and agencies to correct this misinterpretation and to bring new legislation in conformance to Council actions.

Sincerely,



Tim Kennedy
F/V Nowitna
F/V Mystery Bay
F/V Windy Bay

Dick Miller
F/V Controller Bay
1 Dogwood Lane
Edmonds, WA

January 31, 2001

David Benton, Chairman
North Pacific Fisheries Management Council
605 West 4th Avenue Suite 306
Anchorage, AK 99501-2252
VIA FAX 907 271-2817

RECEIVED
JAN 31 2001
N.P.F.M.C

RE: LLP Program and the Capacity Reduction Program

Dear Mr. Benton and Council Members,

I wish to bring the NPFMC's attention a problem regarding the new Capacity Reduction Program, specifically the RAM division's new interpretation of the Capacity Reduction Program wherein RAM fails to include the combined history exception for crab vessels and a ~~my vessel, the F/V Controller Bay, AD# 57847, has fished since 1990 and was lost in 1999. Under RAM's interpretation, I cannot replace this boat even though I have been issued a permanent LLP permit, LLC 3342. I have a shipyard contract to replace the vessel starting next month, and it is imperative before starting construction to know that the replacement vessel will receive a Certificate of Eligibility.~~

I do not believe it was the intent of Congress to ignore the Council's approved actions. I ~~request that the Council also review the new registration in commercial fishing.~~

Sincerely,



Dick Miller
F/V Controller Bay

RM;tk

Ms. Tomi Marsh
F/V Savage
#2 Mussel Alley
Box 742
Pelican, AK 99832

January 31, 2001

David Benton, Chairman
NPFMC Council Members
605 West 4th Avenue Suite 306
Anchorage, AK 99501-2252
907 271-2817

RECEIVED
JAN 31 2001
N.P.F.M.C

RE: LLP Qualifications and the Capacity Reduction Program

Dear Mr. Benton and Council Members,

I am submitting this letter in reference to LLP license qualifications under the new Capacity Reduction Buyback plan. I have been in the Alaskan fishing industry since 1982. I made a commitment to enter the Bering Sea crab fishery in 1995. I relied on the information provided to me by the Council, in particular a November 27, 1995 letter written to me by Clarence Pautzke, Executive Director, which states:

"Both moratorium permits and limited licenses are transferable, and there is already a brisk trade taking place with moratorium "rights". Though this may require an additional capital investment by the purchaser, they present opportunities for non-qualified vessels to enter the fisheries."

The Council approved actions to permit the purchase and transfer of Moratorium qualified fishing rights and history to allow a new vessel to enter the fishery, by removing the old vessel from the fishery and allowing the new vessel to replace it. This moratorium period was later renamed the general qualifying period. These Moratorium replacements should be recognized for vessels that bought Moratorium rights.

The Council also approved the Amendment 10 exception to the one vessel=one history=one license rule for histories to be combined provided it was acquired by Oct 10, 1998. These combined histories need recognition also.

I fished opilio in 1995 and to insure that I would not be excluded from the fishery in the future, I contacted their NPFMC to get in writing what was necessary to comply with the LLP program. I relied on both the letter from Executive Director Pautzke and the approved Council actions to make a decision to invest in the fishery by purchasing LLP rights from the Kamishak Queen, which sunk in 1995.

I believe that I have carefully followed all the Councils guidelines to insure that I would be in compliance with ALL the necessary regulations to be included in the BSAI crab fishery. While I do not believe it was the intent of Congress to disregard the intent of the Council, it seems that inadvertently it has. To exclude me because of a different interpretation of the Councils intent is simply wrong.

I ask that you please contact the appropriate Government offices and agencies to inform them of the Council's approved actions and intent.

Thank you,


Tomi Marsh
F/V Savage

Enclosure: November 27, 1995 letter from NPFMC

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director

Telephone: (907) 271-2809



605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Fax (907) 271-2817

November 27, 1995

Ms. Hitomi Marsh
6201 15th Avenue NW G955
Seattle, WA 98107

Dear Ms. Marsh:

I am writing in response to your September 14, 1995 letter which describes your fisheries participation and requests a special exemption from the License Limitation program proposed by the Council. There are actually two Council limited entry programs which would affect your situation: the general vessel moratorium and the proposed License Limitation program. The Council began its discussions of a general North Pacific vessel moratorium in 1989, and after much analysis, discussion, and public comment, made a final decision in June of 1992. That final decision recognized participation in the fisheries through February 9, 1992, a date which represented an extension of previously considered cut-off dates. After considering several options for accommodating vessels "in the pipeline" (vessels under construction with the intent of entering North Pacific fisheries), the Council finally settled on the more liberal February 9 date, with the intent that this would allow potential "pipeline" vessels to complete their construction and make the necessary landings to qualify for the moratorium.

At the same time that it approved the moratorium, the Council announced and published a cut-off date of June 24, 1992 for purposes of any future limited entry programs; the stated intent of the Council was that participation in the fisheries after that date would not accrue towards future limited entry qualification. It is unfortunate that the vessel moratorium took so long to be reviewed and approved by the Secretary of Commerce, but it has been approved and will be implemented starting with the 1996 fishing year. We expect the moratorium to be in place for 1996 and 1997, to be replaced with the more restrictive License Limitation program in 1998, if that program is approved by the Secretary of Commerce. Consistent with the Council's earlier published cut-off date, that program requires participation prior to June 27, 1992 (the end of the reporting week for landings purposes), as well as subsequent to June of 1992.

In the case of the moratorium, the Council was requiring some evidence of current participation and dependence on the fisheries, and employed the quite liberal qualification period of January 1, 1988 through February 9, 1992. In the case of the proposed Crab License Limitation program, the Council based qualification on both historical participation (base qualification period of January 1, 1988 through June 27, 1992) and current participation (endorsement qualification period of June 27, 1992 through December 31, 1994). In either case, a primary stated intent of the Council was to preclude vessels which had not participated in federally managed crab fisheries by June 27, 1992. The qualification criteria chosen by the Council were based solely on participation in the fisheries, both past and present, and these programs were well publicized through the Council's own public information channels, the FEDERAL REGISTER, and the media.

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Through analyses and public testimony, the Council is aware that many persons who have made recent landings in the fisheries will not qualify for licenses or moratorium fishing privileges. The Council is also aware that there are many different reasons and situations which may have precluded certain operations from meeting the qualification criteria. Though many of these situations may have merit, the Council does not review hardship claims and grant exemptions on an individual basis. The Restricted Access Management (RAM) Division of the National Marine Fisheries Service (NMFS) is in the process of reviewing groundfish and crab permit applications for the 1996 fishing year, subject to the conditions of the vessel moratorium. Specific questions on vessel licensing for 1996 may be directed to them at 907-586-7344.

Both moratorium permits and limited licenses are transferable, and there is already a brisk trade taking place with moratorium 'rights'. Though this may require an additional capital investment by the purchaser, they present opportunities for non-qualified vessels to enter the fisheries. I wish you the best in your future fisheries operations.

Sincerely,



Clarence G. Pautzke
Executive Director

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 N.P.F.M.C

Re: Agenda Item C-6 - Crab Rationalization
 Crab Harvest Capacity Reduction Act -
 Vessels PINNACLE and CONTROLLER BAY

Dear Mr. Chairman:

This letter is submitted on behalf of F/V Pinnacle, Inc. and Controller Bay Joint Venture.

1. **Background.** The Crab Capacity Reduction Act (the "Act") includes vessel eligibility criteria for the Bering Sea/Aleutian Islands crab fisheries that the RAM Division is in the process of implementing.

We understand that the vessel eligibility component of the Act was intended to codify Amendment 10, the Council's "recent participation" amendment to the Crab License Limitation Program (the "LLP"). However, while the LLP licenses persons to participate in fisheries based on their ownership of the catch history of a qualifying vessel, NMFS interprets the Act as establishing a class of vessels that may participate in the BS/AI crab fisheries based on their landing history. Thus, there are now two sets of participation criteria, one for persons and the other for vessels, each of which must be satisfied.

The most direct and immediate problem with this dual eligibility system is that it restricts the class of eligible vessels to the hulls which met the landing requirements for the original LLP program and Amendment 10, without regard to

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whether they have been (or in the future may be) lost or replaced. The cases of the PINNACLE and the CONTROLLER BAY clearly illustrate the problems posed by this system.

2. The PINNACLE. F/V Pinnacle, Inc. constructed the crab vessel PINNACLE in 1991. The vessel was actively employed in the BS/ AI crab fisheries through late 1997, meeting the landings requirements for the crab LLP and Amendment 10. In early 1998, the company determined that a smaller vessel would be more efficient. F/V Pinnacle, Inc. sold the original PINNACLE, Coast Guard No. 978410, to the Alaska Department of Fish and Game. The Department renamed it the STIMSON, and is currently using it as a crab fishery enforcement vessel.

F/V Pinnacle, Inc. retained the old PINNACLE's LLP license and fishing rights, and initiated construction of the new PINNACLE in January of 1998. The vessel was completed in early 1999, assigned Coast Guard No. 1075512, and promptly employed in the BS/ AI crab fisheries under the old PINNACLE's license and fishing rights.

Because the Act is interpreted as being vessel-specific, the list of eligible vessels produced by the RAM Division includes the old PINNACLE and does not include the new PINNACLE. If not cured, this defect will prevent F/V Pinnacle, Inc. from participating in the BS/ AI crab fisheries despite its having satisfied all of the LLP and Amendment 10 criteria.

3. The CONTROLLER BAY. The CONTROLLER BAY case illustrates the time pressure associated with addressing this issue. The vessel is on the Capacity Reduction Act list generated by the RAM Division. However, the vessel sank in May of 1999. The owner has been informed that under IRS rules the insurance proceeds related to the loss must be reinvested by the end of 2001 to receive favorable tax treatment. On the other hand, the owner is now aware that unless and until the Act is amended, there is no assurance that the replacement vessel will be eligible to operate in the BS/ AI crab fisheries. The owner's representative has blueprints and lofting plans for the vessel ready and was about to sign a shipyard contract when he became aware of the Act. He is now quite anxious as to how he should proceed.

4. Conclusion. We fully understand that the Act was not the Council's doing, and suspect some Council members may share vessel owners' frustration with these circumstances. We are in the process of exploring the basis for NMFS's current interpretation of the Act, and if necessary a legislative amendment to

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address the "replacement vessel" problem. We believe that its adoption could be greatly facilitated if the Council expressed its support for an amendment to that effect. We respectfully request that this issue be placed on the April meeting agenda.

Respectfully,

MUNDT MacGREGOR L.L.P.



Joseph M. Sullivan

JMS:emb

cc: Mr. Walt Casto - Via Fax
Mr. Richard Miller - Via Fax
Mr. Phil Smith - Via Fax

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