


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: June 11, 1997

SUBJECT: Groundfish and Crab License Limitation Program

ESTIMATED TIME 2 HOURS

ACTION REQUIRED

- (a) Review License Limitation/CDQ Proposed Rulemaking.
- (b) Discuss and provide direction on skipper reporting system.
- (c) Moratorium: review request to lengthen vessel for safety reasons.
- (d) Receive industry report on crab vessel buyback program.

BACKGROUND

(a) LLP/CDQ Program

The proposed rulemaking package for the License Limitation (LLP) and multi-species CDQ program was transmitted to the Secretary of Commerce (SOC) on June 9. It should be published in the *Federal Register* by June 24. A Notice of Availability (of the FMP amendments) will be published by June 13. After publication of the proposed rule, there will be a 45-day public comment period which will end in September. The SOC will then have 30 days to publish a final rule, and a Secretarial decision should be made in late September or early October. The comment period will not overlap with a Council meeting, but the Council could assign a Committee to review and comment, or delegate that responsibility to staff.

We have limited copies of the Proposed Rulemaking and Final Supplemental Analysis available at this meeting. The LLP portion of the program is fairly straightforward, and appears to reflect Council intent. We have been reviewing this rulemaking over the past several months, and are confident that earlier inconsistencies have been addressed. For your reference, the details of the Council's original motion are included under Item C-7(a), including clarifications made at the September 1995 meeting. We do not intend to go through the details of the LLP portion of the rulemaking, though we will review it once again prior to the close of the formal comment period.

The delays in processing this package largely have been due to the complexities of the multi-species CDQ portion of the program. NMFS has been working closely with the State of Alaska and the CDQ organizations to develop the specifics of this rulemaking. Because the Council has not been directly involved, NMFS now will describe the CDQ portion and how the pollock CDQ program will dovetail into the multi-species program.

(b) Skipper Reporting System

When the Council approved its LLP, they also urged development of a skipper reporting system to collect information on participation in the groundfish and crab fisheries. In April, we reviewed a letter from NMFS outlining a plan for collection of that information (Item C-7(b)(1)). NMFS proposes to use the existing fish ticket (both required and voluntary) system to track participation, using the CFEC permit holder as the basis for attributing that participation. The Council agreed in April to defer action on this issue until members of the affected industry had a chance to review the proposal and respond.

Skippers for Equitable Access (SEA), who originally proposed both the skipper license and skipper reporting systems, have responded with the letter under Item C-7(b)(2). They recommend that an information collection program begin immediately, along the lines described in the NMFS letter, recognizing that future refinements may be needed. For example, more specific information may be collected more expediently through the electronic reporting programs being developed by the agency.

(c) Moratorium request to lengthen vessel

Item C-7(c)(1) is a request from Jensen Maritime Consultants, Inc. to lengthen a vessel beyond the upgrade limits imposed by the Council's moratorium (and LLP). The upgrade would be within the 20% limit, but would violate the prohibition on increasing the length of any vessel over 125'. The vessel's original LOA is 136', with the proposed upgrade to 140'. In considering this request, the Council should discuss whether such an exemption would require a generic change in the regulations, or whether such exemptions would be considered case-by-case.

Other correspondence related to the Council's LLP is contained under Item C-7(c)(2), including a request from Mike and Susan Goad regarding LLP provisions for replacing lost vessels. In this case, they are recommending that the exemptions granted to owners who lost vessels early in the endorsement period be extended to those who lost vessels in the latter part of the endorsement period. Details of their situation are contained in their letter.

(d) Crab Buyback Program

In April the Council received a report on an industry initiative to establish a buyback program for crab vessels under the proposed LLP. An update will be provided at this meeting by Gordon Blue and Arni Thomson.

GROUND FISH LICENSE LIMITATION PROGRAM - PREFERRED ALTERNATIVE

Components and Alternative Elements Affecting Initial Assignment

License Classes

A single type of licenses will be issued (as opposed to multiple types of permits as described in other options).

Nature of Licenses

The Groundfish License Program will restrict access to groundfish fisheries in the EEZ off the Coast of Alaska; The License Program does not restrict access to waters of the State of Alaska. The program will issue non-severable area endorsements for the following management areas: AI, BS, WG, CG+WY, EY+SO. The endorsement would be contained under one of the following General License Umbrellas: GOA, BSAL, or GOA/BSAL. Demersal Shelf Rockfish in waters east of 140° W, and fixed-gear sablefish are excluded from the Groundfish License Program.

License Recipients

Licenses will be issued to current owners (as of 6/17/95) of qualified vessels.¹ (Owners must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. This date may be subject to modification under certain circumstances involving qualified vessels now operating under foreign flags.)

License Designations

Licenses and Endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three Vessel Length Classes (<60', ≥60' & <125', ≥125'). 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. CP/CV designations will be determined based on the activities of the vessel during 1/1/94-6/17/95 or the most recent year of participation during the Endorsement Qualifying Period (EQP). Vessel Length Classes will be based on the length overall of the vessel as of 6/17/95, as long as the vessel conforms with the provisions of the '20% upgrade' and 'Maximum LOA' rules defined in the moratorium². Owners of

¹The language in this section has been changed from the "DRAFT FINAL ACTION" language distributed at the Council meeting on Sunday, June 18, 1995. These changes were made to more accurately reflect the intent of the Council regarding the definition of "current owners," and to ensure consistency regarding the specific dates in the action. All occurrences of the date "6/15/95" have been changed to "6/17/95" in this document to reflect the date of the final Council action. Originally, this section read as follows:

Licenses will be issued to current owners of vessels. Current Owners are defined as those "persons" eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.

²Maximum LOA (the "20% rule" from the moratorium regulations) with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to use a moratorium permit to catch and retain moratorium crab species or conduct directed fishing for moratorium groundfish species during the moratorium, except as provided at § 676.4(d). The maximum LOA of a vessel with moratorium qualification will be determined by the Regional Director as follows:

- (1) For a vessel with moratorium qualification that is less than 125 ft LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125 ft, whichever is less; and
- (2) For a vessel with moratorium qualification that is equal to or greater than 125 ft, the maximum LOA will be equal to the vessel's original qualifying length.

Original qualifying length with respect to a vessel means the LOA of the vessel on or before June 24, 1992.

Length overall of a vessel (from 50 CFR § 672.2 & § 675.2) means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fitting or attachments. (In instances when the length falls on a ½', the LOA is the nearest even number, e.g., 124'6" is LOA 124', and 125'6" is LOA 126'.)

vessels which have upgraded beyond the "Maximum LOA" would receive licenses and endorsements, but these licenses and endorsements could not be assigned to the qualifying vessel.

Qualifying Periods

For General Licenses, the Qualifying Period (QP) is 1/1/88-6/27/92, with the additional provision that any vessel which "crossed over" to groundfish from crab under the provisions of the proposed moratorium by 6/17/95 would also qualify for a General License. For vessels under 60', the General QP is extended through Dec. 31, 1994 for groundfish pot or jig gear—recipients must choose one area endorsement if qualified for multiple endorsements. Vessels which qualify as "cross-overs" or because of the extended General QP would be allowed to use any legal gear to harvest groundfish. For Area Endorsements, the QP is 1/1/92-6/17/95.

The following exemptions are included in the License Limitation program: (1) vessels that were exempted from the proposed moratorium would also be exempt from the license limitation program (26' in the GOA and 32' in the BSAI); and (2) vessels in the BSAI using jig gear that are less than 60' using a maximum of 5 machines, one line per machine, and a maximum of 15 hooks per line. Unlike the moratorium, any 'exempt' vessel which qualifies for a license would receive that license.

Landings Requirements For General License Qualification

One landing of groundfish³ in the General QP, or qualified "moratorium crossover" vessels which "crossed over" from crab by 6/17/95.

Landings Requirements for Endorsement Qualification

Bering Sea/Aleutian Islands:

An endorsement will be issued if a vessel made at least one groundfish landing in an area (BS or AI) during the endorsement period (1/1/92-6/17/95).

Gulf of Alaska:

(1) For all vessels less than 60' in all GOA endorsement areas, an endorsement will be issued if the vessel made at least one landing in the area during the endorsement period (1/1/92-6/17/95).

(2) For the Central Gulf/West Yakutat and Southeast Outside endorsement areas, all vessels $\geq 60'$ but less than 125', which made at least one landing in an area in any two of the four endorsement calendar years (1992, 1993, 1994, or 1995 through 6/17/95), OR four landings between 1/1/95 and 6/17/95 would receive an endorsement for the area. For all vessels $\geq 125'$, endorsements will be issued to vessels which made at least one landing in an area in any two of the four endorsement calendar years (1992, 1993, 1994, or 1995 through 6/17/95).

(3) For the Western Gulf area, all vessels less than 125 feet which made at least one landing between 1/1/92 and 6/17/95 will receive an endorsement. Vessels which are $\geq 125'$ must have made at least one landing in the WG in any two of the four endorsement calendar years (1992, 1993, 1994, or 1995 through 6/17/95) in order to receive an endorsement for the area.

Components and Alternative Elements Affecting the Ownership, Use, and Transfer of Licenses

Who May Purchase Licenses

Licenses may be transferred only to "persons" defined as those eligible to document a fishery vessel under chapter 121, Title 46 U.S.C. There shall be no leasing of groundfish licenses.

³Groundfish Landings" are defined in the Groundfish License Limitation Program to include all groundfish managed under Federal Fishery Management Plans (excluding Demersal Shelf Rockfish in waters east of 140° E., and fixed-gear sablefish) which were made in the EEZ or in the waters of the State of Alaska.

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 initially was issued, subject to license designations, and the "20% rule" and "maximum LOA" in the moratorium regulations, and the "no leasing" restriction. Licenses may be applied to vessels shorter than the "maximum LOA" regardless of vessel class designations, i.e. "downgrades" in vessel classes are allowed.

Options Regarding the Separability of Species and/or Area Designations

Area endorsements are not separable, and shall remain as a single "package," which includes the assigned CV/CP and vessel length class designations. Crab and groundfish licenses that are initially issued to a person (as defined under "License Recipients") are not separable and shall remain as a block for a period of three years. After which time, the Council may review whether or not the groundfish and crab licenses should remain non-severable. Groundfish Licenses obtained after the initial allocation will not be combined with any other licenses owned by the person, and will remain a separate license.

Vessel Replacement and Upgrades

Vessels may be replaced or upgraded within the bounds of the vessel length designations and the 20% Rule as defined in the moratorium proposed rule. If a vessel upgrades under the "20% rule" to a length which falls into a higher vessel length designation after 6/17/95, then the vessel owner would receive the license and endorsements, but could not use them on that vessel⁴.

License Ownership Caps

No more than 10 general licenses per person with grandfather provisions to those persons who exceed this limit in the initial allocation. The intent of the Council is that this limit is applied to the "person" as defined under "License Recipients," and is not interpreted to apply to individual owners within corporations or partnerships.

Vessel License Use Caps

There is no limit on the number of licenses (or endorsements) which may be used on a vessel.

Vessel Designation Limits

A vessel which qualifies for multiple designations (i.e., both as a CV and as a CP) under the use restriction component will be able to participate under any designation for which it qualifies. CV/CP designations will be based on activities during 1/1/94-6/17/95 or the most recent year of participation during the EQP. If a vessel qualifies as a CP only it may select a one-time (permanent) conversion to a CV, though a CP may operate in either mode. If a vessel qualifies as a CV only, it is restricted to operate as a CV.

Community Development Quotas.

7.5% of all BSAI groundfish TACs not already covered by a CDQ program, and a pro-rata share of PSC will be allocated to CDQ Communities as defined in the current CDQ program, with the addition of Akutan. PSC will be allocated "off the top" before the trawl/non-trawl split. The Groundfish CDQ program will be patterned after current CDQ program but will not contain a sunset provision.

Other Provisions

- 1 Licenses represent a use privilege. The Council may convert the license program to an IFQ program or otherwise alter or rescind the program without compensation to license holders.
- 2 Severe penalties may be invoked for failure to comply with conditions of the license.

⁴This is an issue for vessels which have an original qualifying length >50' LOA but less than 60' LOA, or vessels which have an original qualifying length greater than 103' LOA but less than 125'. If these vessels upgrade to the full extent allowed by the "20% rule" after 6/17/95, they will have exceeded the length allowed by the vessel length class designations.

- 3 Licenses may be suspended or revoked for serious and/or multiple violations. (The Council recommends NMFS consult with the Coalition for Stability in Marine Financing regarding license revocation concerns.)
- 4 Implement a Skipper Reporting System which requires groundfish license holders to report skipper names, address, and service records to NMFS.
- 5 An analysis of the impact of various rent collection levels and mechanisms, and enforcement and program implementation costs is required.
- 6 Vessels targeting non-groundfish species (salmon, crab, etc.) that are currently allowed to land incidentally taken groundfish without a groundfish permit, will be allowed to continue to land bycatch amounts. Additionally, vessels participating in the Sablefish and Halibut IFQ program would continue to be able to land bycatch amounts of groundfish as specified in regulations governing that program.
- 7 Vessels which qualified for the NPFMC license limitation program that have been lost or destroyed are still eligible to receive earned licenses and endorsements, subject to rules and conditions outlined in this program.
- 8 Vessels which qualify under 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 fisheries in accordance with the moratorium rules and which made a landing in a fishery any time between the time the vessel left the fishery and 6/17/95, will be qualified for a general license and endorsement for that area.
- 9 Vessels which receive an "empty umbrella" because they qualified under the GQP in one FMP and made landings during the EQP in the other FMP, would be issued endorsements and a general license for the FMP area and FMP subareas for which they meet the Endorsement Landings Requirements.
- 10 The CDQ vessel exemption included in the Moratorium will continue under the Groundfish License Limitation Program. This exemption allows vessels <125' obtained under an approved CDQ plan to participate in both CDQ and non-CDQ fisheries. If the vessel is sold to an interest outside the CDQ plan, the vessel will no longer be exempt from the requirements of the license program.
- 11 Each element and component of the Groundfish and Crab license limitation program as described in this action are integral to the overall program. No component or element of the program should be regarded as severable by the Secretary of Commerce.
- 12 Buy-back or Retirement programs for vessels or licenses will not be implemented at this time.
- 13 The Two-Tiered Skipper License Program will not be implemented at this time. Future analysis of a license program for skippers, based on the amended program outlined by SEA, will be set on its own time line.
- 14 Community Development Licenses will not be a part of the Community Development Program.
- 15 The Council will consider options to compensate vessel owners who qualified for Southeast Outside endorsements using trawl gear, if and when individual quota programs are studied.
- 16 The option to allow vessels which are designated as catcher vessels to add limited amounts of processing capability will not be allowed under this action. This option will be further analyzed when the Council addresses "Full Utilization."
- 17 A sunset date on the Groundfish License Program will not be set at this time.

CRAB LICENSE LIMITATION PROGRAM - PREFERRED ALTERNATIVE

Components and Alternative Elements Affecting Initial Assignment

License Classes

A single type of licenses will be issued (as opposed to multiple types of permits as described in other options).

Nature of Licenses

The Crab License Program restricts access to the Bering Sea and Aleutian Islands King and Tanner Crab Fisheries in the EEZ. The program does not restrict access within waters of the State of Alaska, nor does it affect crab fisheries which are not managed by the BSAI King and Tanner Crab FMP. The Crab License Program will issue General Licenses and Endorsements for each species/area combination.

The species / area combinations are as follows:

- | | |
|---|---------------------------------|
| 1. Pribilof red + Pribilof blue king crab | 5. Adak red king crab |
| 2. <i>C. opilio</i> + <i>C. bairdi</i> | 6. Bristol bay red king crab |
| 3. St. Matthew blue king crab | 7. Dutch Harbor brown king crab |
| 4. Adak brown king crab | 8. Norton Sound red king crab |

The Council also recommends classifying all crab species not included in the endorsement list that are covered under the Crab FMP as "developing fisheries." This list includes but is not limited to: Bering Sea brown king crab, BSAI *C. tanneri*, *Lithodes couesi*, and *C. angulatus*, and Dutch Harbor red king crab. To participate in a developing fishery a person must have a valid federal crab license as defined in this program.

License Recipients

Licenses will be issued to current owners (as of 6/17/95) of qualified vessels.⁵ (Owners must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C.. This date may be subject to modification under certain circumstances involving qualified vessels now operating under foreign flags.) In the Norton Sound King crab summer fishery, "persons" eligible to receive a license include the following:

- a) individuals who held State of Alaska Permit for the Norton Sound King Crab summer fishery and who made at least one landing; or
- b) current vessel owners (as of 6/17/95) in instances where a vessel was corporate owned, but operated by a skipper who was a temporary contract employee.

License Designations

Licenses and Endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three Vessel Length Classes (<60', ≥60' & <125', ≥125'). CP/CV designations will be determined based on the activities of the vessel during the most recent year of participation during the Endorsement Qualifying Period

⁵The language in this section has been changed from the "DRAFT FINAL ACTION" language distributed at the Council meeting on Sunday, June 18, 1995. These changes were made to more accurately reflect the intent of the Council regarding the definition of "current owners," and to ensure consistency regarding the specific dates in the action. All occurrences of the date "6/15/95" have been changed to "6/17/95" in this document to reflect the date of the final Council action. Originally, this section read as follows:

Licenses will be issued to current owners of vessels. Current Owners are defined as those "persons" eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.

(EQP). Vessel Length Classes will be based on the overall length of the vessel as of 6/17/95⁶, as long as the vessel conforms with the provisions of the '20% upgrade' and 'Maximum LOA' rules defined in the moratorium⁷. Owners of vessels which have upgraded beyond the "maximum length" would receive licenses and endorsements, but these licenses and endorsements could not be assigned to the qualifying vessel. Further, for the Norton Sound King crab summer fishery, vessels less than 32' may upgrade beyond 20% but may not exceed 32' unless the 20% upgrade would result in a vessel that exceeds 32'.

Qualifying Periods

For General Licenses, the Qualifying Period (QP) is 1/1/88 - 6/27/92, with the additional provision that any vessel which "crossed over" to crab from groundfish (by 12/31/94) under the proposed moratorium would also qualify for a General License. Vessels meeting these requirements would receive endorsements based on landings in the Endorsement Qualifying Period (EQP) of 1/1/92 - 12/31/94, except Bristol Bay red king crab which will use 1/1/91-12/31/94 as the endorsement qualifying period. (Vessels in the Norton Sound King Crab fisheries, and Pribilof King Crab fisheries will be exempt from the requirements of the QQP, and must have made landings between 1/1/93 - 12/31/94⁸).

Minimum landings

To receive a Red or Blue King crab species/area endorsement a vessel must have made at least one landing in a Red or Blue King crab fishery in the endorsement list above during the EQP. To receive a Brown King crab species/area endorsement, a vessel must have made at least three landings in the Brown King crab fishery during the Endorsement Qualifying Period (EQP) of 1/1/92 to 12/31/94. To receive a combined *C. opilio*/*C. bairdi* crab species/area endorsement, a vessel must have made at least three landings in the *C. opilio*/*C. bairdi* crab fisheries during the EQP.

⁶This date is consistent with the date used to determine length classes in the Groundfish License Limitation Program. If different dates were used in the two programs, the possibility of having a single vessel with two different length class designations arises.

⁷Maximum LOA (the "20% rule" from the moratorium regulations) with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to use a moratorium permit to catch and retain moratorium crab species or conduct directed fishing for moratorium groundfish species during the moratorium, except as provided at § 676.4(d). The maximum LOA of a vessel with moratorium qualification will be determined by the Regional Director as follows:

- (1) For a vessel with moratorium qualification that is less than 125 ft LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125 ft, whichever is less; and
- (2) For a vessel with moratorium qualification that is equal to or greater than 125 ft, the maximum LOA will be equal to the vessel's original qualifying length.

Original qualifying length with respect to a vessel means the LOA of the vessel on or before June 24, 1992.

Length overall of a vessel (from 50 CFR § 672.2 & § 675.2) means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fitting or attachments. (In instances when the length falls on a 1/2', the LOA is the nearest even number, e.g., 124'6" is LOA 124', and 125'6" is LOA 126'.)

⁸The Council passed an amendment in this section stating that a vessel which qualifies for a Norton Sound King Crab endorsement, would not be issued other endorsements. The Council's intent is that a vessel not be allowed to participate in both the Norton Sound Fishery and another BSAI crab fishery in the same year. The Council's intent is best implemented by maintaining the current super-exclusive registration for the Norton Sound fishery, and allowing persons to receive any and all endorsements for which the vessel qualifies.

Components and Alternative Elements Affecting the Ownership, Use, and Transfer of Licenses

Who May Purchase Licenses

Licenses may be transferred only to "persons" defined as those eligible to document a fishery vessel under chapter 121, Title 46 U.S.C. There shall be no leasing of crab licenses.

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 initially was issued, subject to license designations, and the "20% rule" and "maximum LOA" in the moratorium regulations, and the "no leasing" restriction. Licenses may be applied to vessels shorter than the "maximum LOA" regardless of vessel class designations, i.e. "downgrades" in vessel classes are allowed.

Options Regarding the Separability of Species and/or Area Designations

Species/area endorsements are not separable, and shall remain as a single "package," which includes the assigned CV/CP and vessel length class designations. Crab and groundfish licenses that are initially issued to a person (as defined under "License Recipients") are not separable and shall remain as a block for a period of three years, after which time the Council may review whether or not the groundfish and crab licenses should remain non-severable. Crab Licenses obtained after the initial allocation will not be combined with any other licenses owned by the person, and will remain a separate license.

Vessel Replacement and Upgrades

Vessels may be replaced or upgraded within the bounds of the vessel length designations and the 20% Rule as defined in the moratorium proposed rule. If a vessel upgrades under the "20% rule" to a length which falls into a higher vessel length designation after 6/17/95, then the vessel owner would receive the license and endorsements, but could not use them on that vessel⁹.

License Ownership Caps

No more than 5 general licenses per person, with grandfather provisions to those persons who exceed this limit in the initial allocation. The intent of the Council is that this limit is applied to the "person" as defined under "License Recipients," and is not interpreted to apply to individual owners within corporations or partnerships.

Vessel License Use Caps

There is no limit on the number of licenses (or endorsements) which may be used on a vessel.

Vessel Designation Limits

A vessel which qualifies for multiple designations (i.e., both as a CV and as a CP) under the use restriction component will be able to participate under any designation for which it qualifies. Vessel designations will be based on activities during 1/1/94 - 12/31/94 or the most recent year of participation during the EQP. If a vessel qualifies as a CP only, it may select a one-time (permanent) conversion to a CV, though a CP may operate in either mode. If a vessel qualifies as a CV only, it is restricted to operate as a CV.

Community Development Quotas.

For those BSAI Crab species for which there is an assigned Guideline Harvest Level, 7.5% of the GHL shall be allocated to CDQ communities, as defined in the current CDQ program, with the addition of Akutan. The Crab CDQ Program shall be patterned after current CDQ program but will not contain a sunset provision.

⁹This is an issue for vessels which have an original qualifying length >50' LOA but less than 60' LOA, or vessels which have an original qualifying length greater than 103' LOA but less than 125'. If these vessels upgrade to the full extent allowed by the "20% rule" after 6/17/95, they will have exceeded the length allowed by the vessel class designations.

Other Provisions

- 1 Licenses represent a use privilege. The Council may convert the license program to an IFQ program or otherwise alter or rescind the program without compensation to license holders.
- 2 Severe penalties may be invoked for failure to comply with conditions of the license.
- 3 Licenses may be suspended or revoked for serious and/or multiple violations. (The Council recommends NMFS consult with the Coalition for Stability in Marine Financing regarding license revocation concerns.)
- 4 Implement a Skipper Reporting System which requires crab license holders to report skipper names, address, and service records to NMFS.
- 5 An analysis of the impact of various rent collection levels and mechanisms, and enforcement and program implementation costs is required.
- 6 No future super-exclusive areas will be proposed (this option is only an expression of Council intent).
- 7 Vessels which qualified for the NPFMC license limitation program that have been lost or destroyed are still eligible to receive earned licenses and endorsements, subject to rules and conditions outlined in this program.
- 8 Vessels which qualify under 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 fisheries in accordance with the moratorium rules and which made a landing in a fishery any time between the time the vessel left the fishery and June 17, 1995 (the date of final Council action on the license program), will be qualified for a general license and endorsement for that fishery.
- 9 The CDQ vessel exemption included in the Moratorium, will continue under the Crab License Limitation Program. This exemption allows vessels <125' obtained under an approved CDQ plan to participate in both CDQ and non-CDQ fisheries. If the vessel is sold to an interest outside the CDQ plan, the vessel will no longer be exempt from the requirements of the license program.
- 10 Each element and component of the Groundfish and Crab License Limitation Program as described in this action are integral to the overall program. No component or element of the program should be regarded as severable by the Secretary of Commerce.
- 11 An Individual Transferable Pot Quota (ITPQ) System will not be implemented at this time.
- 12 Buy-back or Retirement programs for vessels or licenses will not be implemented at this time.
- 13 The Two-Tiered Skipper License Program will not be implemented at this time. Future analysis of a license program for skippers, based on the amended program outlined by SEA, will be set on its own time line.
- 14 Community Development Licenses will not be a part of the Community Development Program.
- 15 A sunset date on the Crab License Program will not be set at this time.

Comprehensive Rationalization Program

License 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.

Relationship Between Base and Endorsement Qualifying Periods and Endorsement Eligibility

Participation in the Base Qualifying Period	Participation in the Endorsement Qualifying Period	Endorsement Eligibility
BSAI Groundfish or Crab	BSAI Groundfish	BSAI
BSAI Groundfish or Crab	BSAI and GOA Groundfish	BSAI
BSAI Groundfish or Crab	GOA Groundfish	GOA
GOA Groundfish	GOA Groundfish	GOA
GOA Groundfish	BSAI and GOA Groundfish	GOA
GOA Groundfish	BSAI Groundfish	BSAI
BSAI Groundfish or Crab and GOA Groundfish	BSAI Groundfish	BSAI
BSAI Groundfish or Crab and GOA Groundfish	GOA Groundfish	GOA
BSAI Groundfish or Crab and GOA Groundfish	BSAI and GOA Groundfish	BSAI & GOA
Vessel is < 60' and no base period landings	BSAI and/or GOA Groundfish with pot and/or jig gear.	One FMP Subarea Only
Vessel is < 60' with BSAI crab landings	BSAI and/or GOA Groundfish with pot and/or jig gear.	Choice -- See below.
<p>These vessels may choose to qualify under the rules for "crab crossover" vessels or as "pot/jig" vessels. Choosing to qualify as "crab crossover" vessels will mean they qualify for only BSAI or GOA, but not both. Choosing to qualify as "pot/jig" vessels will mean selecting a single subarea endorsement.</p>		

Landings in State Waters: The Council reaffirmed their intent to allow landings which were made in State waters to count towards qualification in the license program. NMFS had asked the Council to clarify this issue because a federal license will not be required to continue fishing in state waters.

Western Gulf Minimum Landings Requirements: The Council corrected an error in the June Newsletter regarding Western Gulf landings requirements in the Endorsement Qualifying Period (EQP). The one landing requirement during the EQP was actually meant to only apply to catcher vessels; catcher/processors from 60-125' would still be subject to landings in two of four EQP years or 4 landings in 1995. The EQP is the period between 1/1/92 through 6/17/95. The corrected landings requirements are shown in the table below.

Minimum Landings Requirements in the Endorsement Qualifying Period for the Western Gulf

Vessel Type	0 - 59' LOA	60' - 124' LOA	125' + LOA
Catcher Vessel	1 landing	1 landing	1 landing in 2 of 4 EQP years.
Catcher Processor	1 landing	1 landing in 2 of 4 EQP years, or 4 landings in 1995.	1 landing in 2 of 4 EQP years.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

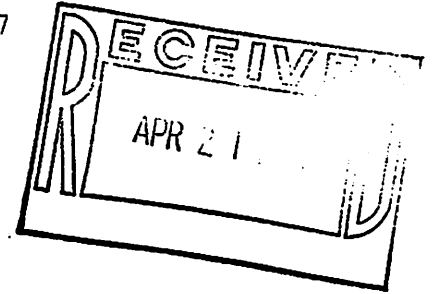
P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA C-7(b)(1)

JUNE 1997

April 9, 1997



Mr. Richard B. Lauber
Chairman, North Pacific Fishery
Management Council
605 W. 4th Avenue
Anchorage, Alaska 99510

Dear Rick,

When the North Pacific Fishery Management Council (Council) adopted its proposed license limitation program for the Alaska groundfish and crab fisheries, the Council included a provision that NMFS establish a "Skipper Reporting System." The intent of this system is to collect data that may be used for the future analysis and implementation of a limited access program for vessel "skippers." At its December 1996 meeting, the Council requested that a progress report on the development of this system be presented at its April 1997 meeting.

NMFS staff met with staff from the Council and the Alaska Department of Fish and Game (ADF&G) to explore options for the collection of species catch data to document individual "skipper" participation in the groundfish fishery. The design of an appropriate information system depends on how the Council chooses to define the term "skipper" and the level of detail of catch accounting that can reasonably be credited to an individual. Ostensibly, the data collected on "skipper" participation should be sufficiently detailed to support an analysis of an individual fishing quota (IFQ) program as a type of "skipper" limited access program.

A detailed discussion among staff was hampered somewhat by several fundamental issues that will need to be resolved by the Council before staff development of the program is pursued further. Nonetheless, staff made some assumptions about these issues and developed a possible data collection plan for Council consideration. A summary of the staff discussion follows.

Definition of the term "skipper". The definition of the term "skipper" for purposes of the Council will need to be clarified. For example, a "skipper" could be any person with an Alaska State Commercial Fisheries Entry Commission (CFEC) permit who signs an ADF&G fish ticket, any person aboard a fishing vessel with a U.S. Coast Guard fishing master license, or the person aboard a fishing vessel who makes major decisions about fishing operations (vessel operator). Existing Federal or State regulations



(attached) may provide pertinent guidance to the Council during the development of an operational definition of "skipper".

The Council should consider whether a vessel could have more than one person aboard at any time who would be designated as a "skipper" (e.g., the engineer or first mate)? If so, would the catch on board a catcher/processor vessel or catch delivered to a mothership be attributed to a "skipper" on a haul by haul basis? Should guidelines be developed on how catch landed shoreside would be split between more than one "skipper" aboard a vessel? From the perspective of information system design, a new "Skipper Reporting System" would be simplified if the term "skipper" was defined so that, at any time, only one individual aboard a vessel could be designated as the "skipper."

Existing Federal and State reporting programs. The NMFS industry recordkeeping and reporting program was not designed to provide species specific information on a haul by haul or landing basis. Rather, this system was designed to collect aggregate data on species catch information that is submitted weekly by processors to NMFS for purposes of monitoring groundfish quotas. Although vessel operators are required to maintain daily fishing logbooks, logbook data are not entered into a database because of insufficient staff resources and prohibitive costs associated with verifying, keypunching, and maintaining such a large database. Furthermore, catcher vessel logbooks are not required for vessels less than 60 ft length overall, nor do these logbooks collect information on species composition of retained catch. This information is recorded in processor logbooks and reported to NMFS on Weekly Production Reports.

Shoreside landings of catch are recorded on ADF&G fish tickets. The ADF&G fish tickets identify the CFEC permit holder who signed the ticket. Under Alaska State regulations at AS 16.43.140 (see attachment), the permit holder is responsible for the operation of fishing gear, although the permit holder is not always the person responsible for the operation of the vessel ("skipper").

Fish tickets are not required from operations fishing exclusively in federal waters, including catcher/processor vessels or catcher vessels delivering to motherships. ADF&G does record fish ticket data voluntarily submitted by these at-sea operations.

Potential changes to existing reporting programs? ADF&G recommends that the CFEC permit holder be used as the basis to define qualifiers in a future "skipper"-based limited access program because 1) extensive historical records on participation already exist, 2) personal documentation of the permit holders is extensive, and 3) major revisions to the data collection system

are not required to provide these data. "Skippers" of vessels operating in Federal waters off Alaska could continue voluntary submission of ADF&G fish tickets to document individual participation in the groundfish fisheries.

Changes to the Federal and State reporting programs would be required if the Council chose an operational definition of "skipper" different from the CFEC permit holder who signed an ADF&G fish ticket. These changes could be substantive depending on how "skipper" is defined, the level of catch accounting that would be credited to an individual "skipper", and whether or not multiple "skippers" could be aboard a vessel at the same time.

Species composition and amounts on a haul by haul basis are conceptualized as components of the Federal electronic reporting program that will be developed by NMFS over the next 2 years. Any new electronic reporting program that is developed will likely replace the existing logbooks and reporting requirements and would provide the level of catch reporting necessary to support an analysis of an IFQ program.

Initial proposal for collection of "skipper" data. At this time, staff and budget resources will not support substantive changes to the Federal or State recordkeeping and reporting program for the single purpose of collecting data that may or not be used in the development of a future "skipper" limited access program. If the Council wishes to pursue a "skipper" reporting system using other than ADF&G fish ticket data to document participation in a fishery, NMFS would need to remove this element from the Council's proposed vessel license limitation program. This action would allow separate development of a "skipper" reporting system in conjunction with NMFS's initiative to develop an electronic recordkeeping and reporting program.

Sincerely,



Steven Pennoyer
Administrator, Alaska Region

Attachment

Attachment

Existing State and Federal operational terms and definitions that could provide guidance to the Council for the development of a definition of "skipper" for purposes of the Council's proposed "Skipper Reporting System."

1. The following is from the CFEC-related Alaska State statutes and highlights that the CFEC permit holder is the person responsible for operating the fishing gear:

AS 16.43.140 Permit Required. (a) After January 1, 1974, a person may not operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crew member or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

2. The following is from the ADF&G-related statutes and refers to the operator of a vessel, rather than the operator of gear:

AS 16.05.940(23) "operator" means the individual by law made responsible for the operation of the vessel.

3. Federal regulations at 50 CFR 600.10 define the "operator" of a vessel as follows:

"Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel."

JUN-09-1997 17:04

ALYESKA SEAFOODS INC



907 581 16 JUNE 1997



June 10, 1997

Mr. Richard Lauber, Chairman
North Pacific Management Council
P.O. Box 103136
Anchorage, Alaska 99510

VIA FAX (907)271-2817

Dear Mr. Lauber,

I am writing to request that the Council direct ADF&G and NMFS to develop and implement a "Skipper reporting system" using existing ADF&G fish ticket information. At the December meeting the Council directed these agencies to develop a "Skipper reporting system". At the April Council meeting a progress report was given and in it NMFS raised several concerns it had regarding the design of the system. These concerns primarily related to the definition of "Skipper" and therefore who should be the "person of record".

Skippers for Equitable Access would like to give some input to the Council and the respective agencies regarding these concerns. I called for a meeting of the board of directors and officers of SEA on May 9th to consider what our recommendations should be. As the Council may recall, SEA is a group of vessel operators and owner/operators who operate in both crab and groundfish fisheries in the North Pacific and Bering Sea. Our membership includes members from both the shoreside crab catcher boat and catcher/processor fleet as well as the inshore/offshore groundfish fleets. In the groundfish fleet we have members from the shoreside catcher boat fleet, the offshore catcher boat fleet delivering to motherships, the factory trawl fleet, and the freezer longliner fleet. With the exception of the freezer longliner fleet, input was received from these groups by the SEA board to guide its recommendations.

The SEA board felt that since all crab fisheries are state controlled and any other fisheries that deliver shoreside or take place in state waters also report to the state via ADF&G fish tickets the main problems in record keeping are with the offshore trawl fisheries. This includes both F/T and mothership operations. The SEA board felt that the simplest method would be to stay with the existing ADF&G fish tickets since it appears that a great many of these operations are already filling out fish tickets voluntarily. Staying with an existing system, to the degree possible, would greatly simplify the process and cause the fewest problems. This data base will be used in the future to determine an individuals catch history and hence, if future IFQ programs are developed, could be used to determine an individuals Quota Share. There is a great incentive here to participate, even voluntarily, and no discernible downside.

It was felt by the SEA board that in most cases the operator, person with the permit card, and the person in charge of the fishing operation were the same and was best represented by the permit card holder. I have therefore been directed by the board to recommend to the Council that the permit card holder be considered the "person of record". Admittedly this program may not cover every possible situation initially and will undoubtedly need refinement and modification over time but SEA feels that it is crucial to begin the process of data collection sooner rather than later. Ideally NMFS will be able to incorporate this data collection into the electronic reporting system they are currently developing but to wait as much as two years for that to get on line before even starting to collect any data would be a mistake. We have many of the tools we need for this program available to us right now and we should begin as soon as possible.

SEA therefore urges the Council to direct NMFS and ADF&G to begin the "Skipper reporting system" using the available data provided by ADF&G fish tickets and to begin developing supplemental data collection programs, such as electronic reporting, as needed.

Sincerely,



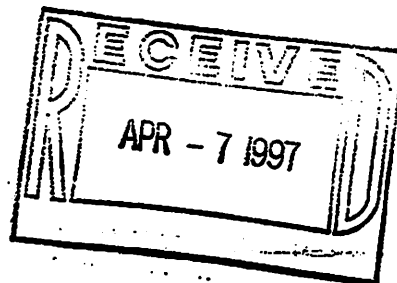
Tom Suryan
President, SEA



JMC

Jensen Maritime Consultants Inc. NAVAL ARCHITECTS
MARINE ENGINEERS

April 2, 1997
JMC File No. 95166



North Pacific Fishery Management Council
605 W 4th Avenue, Ste 306
Anchorage, AK 99501

**Subj: F/V NORTON SOUND (O.N. 936017), 136-Foot LOA Steel Longliner
Request for Approval of Increase in Vessel Length to Improve Safety**

**Ref: (a) F/V NORTON SOUND Federal Fishing Permit No. 965294A
(b) 50 CFR 676.2
(c) JMC Dwg. No. 95166-101-1, F/V NORTON SOUND Outboard Profile**

On behalf of the Owners of the subject vessel, Jensen Maritime Consultants (JMC) requests that bow modifications be permitted which will increase the Length Overall (LOA) by a small amount. We request your review of this matter at your earliest convenience.

We offer the following information as the basis for our request:

1. The Original Qualifying LOA, which is also the existing LOA, is 136 feet. According to reference (b), the vessel's Maximum LOA is the same as the Original Qualifying LOA because the Original Qualifying LOA is more than 125 feet. Taken literally, this does not allow any increase in LOA for the NORTON SOUND.
2. The existing bow stem of the vessel is nearly vertical and the sides of the upper bow are also nearly vertical as shown on reference (c). This poses a serious safety hazard because of heavy to moderate seas shipping over the bow without significant resistance.
3. We propose to correct this safety hazard by tipping the bow stem forward, raising the bow, and filling out the top of the bow as shown on reference (c). This modification will improve the seakeeping and safety of the vessel by increasing the upper bow buoyancy and reflecting heavy seas outward due to the "V" shape of the modified upper bow, thus allowing less "green water" over the bow.

4. These modifications are proposed purely as a measure to increase the safety of the vessel. The cargo capacity will not increase as a result of the bow modifications. For these reasons we strongly feel that the modifications to the NORTON SOUND are within the spirit of the limitations intended by the Moratorium.

5. After the bow modifications are done, we recommend that the Maximum LOA indicated on the Moratorium Permit remain at 136 feet, and that a notation be entered on the Permit indicating the vessel LOA with approved bow modifications actually measures 140 feet. This way, if the vessel is ever replaced, the lesser length would still be applicable as the Maximum LOA under the Moratorium.

The physical modifications to the NORTON SOUND are planned for this Summer in a Northwest shipyard, contingent upon your approval regarding the Moratorium qualification.

Please feel free to call me if you have any questions or comments. Thank you for your consideration of this matter.

Sincerely,

JENSEN MARITIME CONSULTANTS, INC.



John Hveding, P.E.
Chief Projects Manager

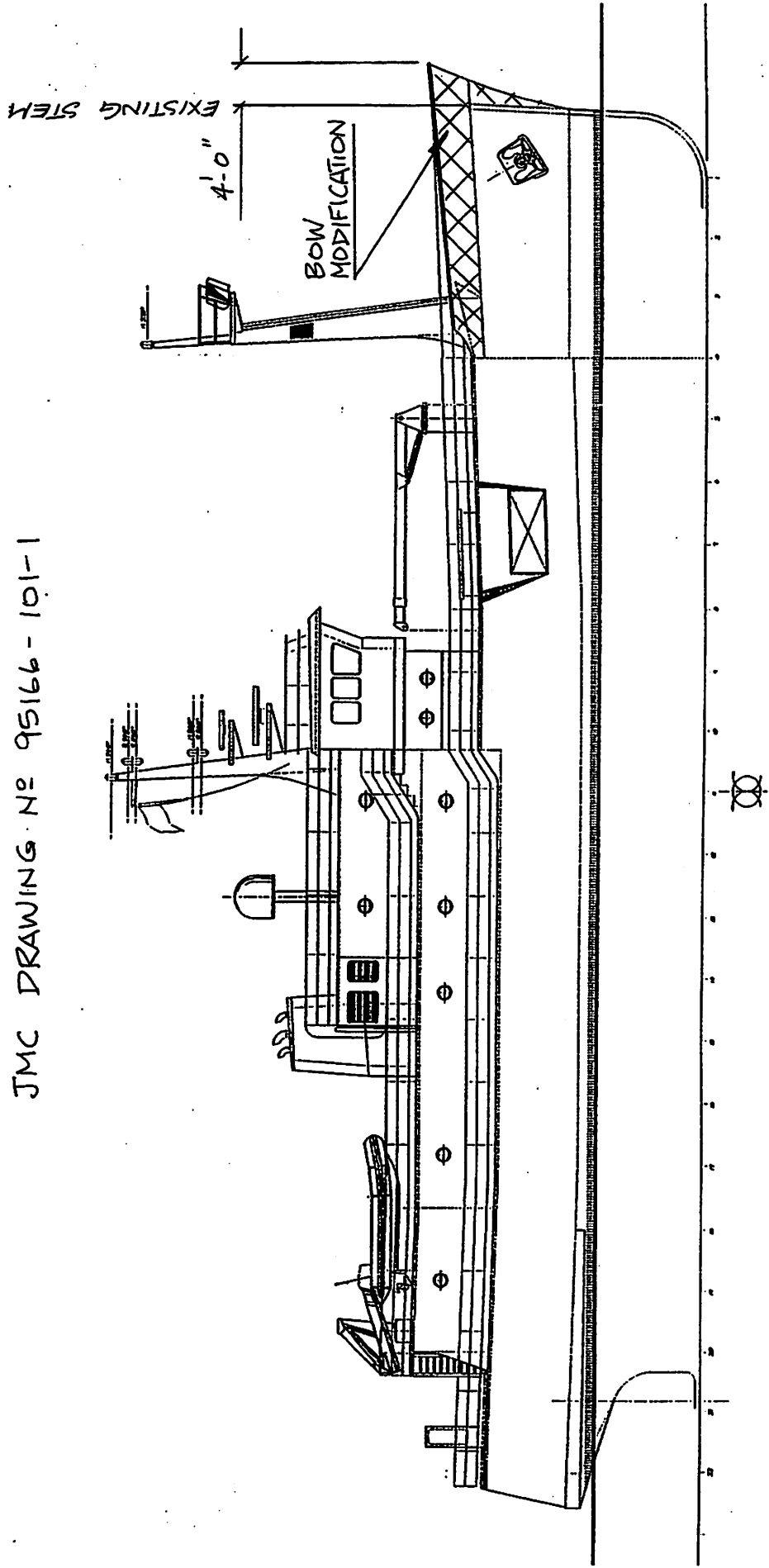
Encl: Reference (c)

cc: Kjell Gjerde, Glacier Fish Co.

JH/HH/mg

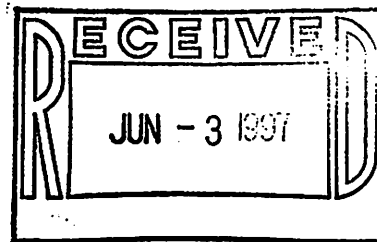
JMC

JMC DRAWING NO 95166-101-1



1212 31st Street
Anacortes, Wa. 98221
November 13, 1996

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



Gentlemen:

This letter is to request special consideration for the NPFMC license limitation program for grey cod in the Gulf of Alaska.

We started construction of our house aft 90' Lady Selket in 1989. We participated in the halibut fishery in May 1990 in the Central Gulf and had cod landings. The boat then tendered salmon until Fall and then participated in the late halibut fishery and we again had cod landings. The boat then returned to Washington for warranty work.

In January 1991, we participated in the pot cod fishery and had multiple landings. We then tendered herring and then again the halibut fishery and again had cod landings. We then tendered salmon and fished halibut in the fall with cod landings. The boat King Crab fished in November.

In 1992, we fished halibut and had cod landings and again herring and salmon tendered. The boat then fished for King Crab and Tanners.

In 1993, the boat continued opilio fishing and then tanners. The quota was caught for cod and the season was closed, so again we tendered herring and salmon. The boat returned to Washington to repair grounding damage. It left again for opilio fishing.

February 1994, we lost the Lady Selket during opilio fishing in the Bering Sea.

In June of 1994, we replaced our boat with one that had never fished. A complete conversion was needed. Work was done on the boat until December 1994, when it left for opilio fishing. After opilios the boat returned to Washington to continue the conversion work. Refrigeration was installed and fish tanks were insulated so the boat could fish as well as tender.

The boat was able to leave in the late spring of 1995 to tender Togiak and Norton Sound herring and again salmon tendering. In the fall the boat was able to fish Blue Crab and then tanners.

The council made provisions that allow vessels that were lost or destroyed and re-entered the fishery to be exempt from the multiple landings requirements. Our vessel was lost before we were able to make landings in 2 of 4 calendar years (1992-95). We re-entered

the fishery but it was after the June 17, 1995 cut-off date. We feel that we have made an effort to participate in these fisheries, however, because of an unfortunate accident we were unable to meet the letter of the law. We feel that the exemptions granted to owners that lost vessels early in the endorsement period be extended to those who lost vessels latter in the endorsement period.

Thank you for your consideration.

Sincerely,

Mike Goad
Susan Goad

Mike and Susan Goad

(360) 293-3005

(360) 293-4050 Fax

DRAFT

Billing Code: 3510-22

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. ; I.D.]

RIN

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program; Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 39 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 41 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BS/AI). This action is necessary to implement two regulatory programs recommended by the North Pacific Fishery Management Council (Council): the License Limitation Program (LLP), and the expansion of the Community Development Quota (CDQ) Program. The LLP is intended to limit the number, size, and specific operation of vessels that may be used in fisheries for groundfish, other than demersal shelf rockfish east of 140° W. long. and sablefish managed under the Individual Fishing Quota (IFQ) program for Pacific halibut and sablefish, in the exclusive economic zone

DRAFT

(EEZ) off Alaska. The LLP also is intended to limit the number, size, and specific operation of vessels that may be used in fisheries for crab species managed pursuant to a fishery management plan (FMP). These limits would be accomplished by: (1) allowing access to the fisheries referenced above only to vessels operated by license holders, who must hold one or more of the limited number of licenses initially issued to qualified persons; (2) reducing the fishing effort and excess capitalization of the fleet relative to the limits established by the current moratorium on entry through the use of vessel length categories and vessel designations; and (3) reducing participation across management subareas, regulatory areas, and regulatory districts, by issuing separate and non-severable fishing endorsements for each of those areas based on the past participation of vessels owned by initial applicants on June 17, 1995. Expansion of the CDQ program is intended to extend the current benefits of CDQ allocations by specifying a percentage of the total allowable catch (TAC) of groundfish in the BSAI and crab species in the BS/AI that are not currently included in the existing CDQ programs for pollock, halibut and sablefish.

DATES: Comments must be received by insert date 45 days after date of publication in the FEDERAL REGISTER.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the

Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the above address.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION:

The U.S. groundfish fisheries of the GOA and the BSAI in the EEZ are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The commercial king crab and Tanner crab fisheries in the BS/AI are managed by the State of Alaska with Federal oversight pursuant to the FMP for those fisheries. The FMPs were prepared by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 16 U.S.C. 1801, et seq., and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

License Limitation Program - Background Information

The LLP is the first stage in fulfilling the Council's commitment to develop a comprehensive and rational management program for the fisheries in and off Alaska. The Council first considered the comprehensive rationalization plan (CRP) at its meeting in November 1992. Experts on limited entry programs were invited to testify at that meeting, and the Council reviewed initial CRP proposals from the fishing industry. In December 1992, the Council approved a problem statement describing the need for and purpose of the CRP.

The problem statement articulated the Council's concern that

the domestic harvesting fleet had expanded beyond the size necessary to harvest efficiently the optimum yield (OY) of the fisheries within the EEZ off of Alaska. Further, it confirmed the Council's commitment to the long-term health and productivity of the fisheries and other living marine resources in the North Pacific and Bering Sea ecosystem. To fulfill that commitment, the Council intended to design a program that would efficiently manage the resources under its jurisdiction, reduce bycatch, minimize waste, and improve utilization so that the maximum benefit of these resources would be provided to present and future generations of fishermen, associated fishing industry sectors, fishing communities, consumers, and the Nation as a whole. The Council also committed itself to support the stability, economic well-being, and diversity of the seafood industry, and provide for the economic and social needs of communities dependent on that industry.

The problem statement also contained the following fourteen issues identified by the Council as areas to be addressed by the CRP:

- (1) harvesting capacity in excess of that required to harvest the resource;
- (2) allocation and preemption conflicts between and within industry sectors, such as with inshore and offshore components;
- (3) preemption conflicts between gear types;
- (4) gear conflicts within fisheries where overcrowding of fishing gear exists due to excessive participation and surplus

fishing effort on limited grounds;

(5) dead-loss such as "ghost fishing" with lost or discarded gear;

(6) bycatch loss of groundfish, crab, herring, salmon, and other non-target species, including bycatch which is not landed for regulatory reasons;

(7) economic loss and waste associated with discard mortality of target species harvested but not retained for economic reasons;

(8) concerns regarding vessel and crew safety that are often compromised in the race for fish;

(9) economic instability within various sectors of the fishing industry, and in fishing communities caused by short and unpredictable fishing seasons, or preemption that denies access to fisheries resources;

(10) inability to provide for a long-term stable fisheries-based economy in small economically disadvantaged adjacent coastal communities;

(11) reduction in ability to provide a quality product to consumers at a competitive price, and thus maintain the competitiveness of seafood products from the EEZ off Alaska on the world market;

(12) possible impacts on marine mammals and seabirds, and marine habitat;

(13) inability to achieve long-term sustainable economic benefits to the Nation; and

(14) a complex enforcement regimen for fishermen and management alike that inhibits the achievement of the Council's comprehensive goal.

At its meeting in January 1993, the Council began evaluating the effectiveness of different alternatives to determine which ones would best meet the objectives of the CRP. These alternatives included: (1) exclusive area registration; (2) seasonal allocations; (3) license limitation; (4) gear allocations; (5) inshore/offshore allocations; (6) CDQ allocations; (7) trip limits; (8) IFQ for prohibited species catch; (9) non-transferable IFQ; (10) transferable IFQ; and (11) harvest privilege auctions. All the alternatives had qualities that would have helped achieve some of the objectives of the CRP; however, after comparing the strengths and weaknesses of the alternatives, the Council identified license limitation and transferable IFQ as the most viable alternatives.

Although transferable IFQ was identified as the alternative with the greatest potential for solving the most issues in the problem statement for the CRP, several problems prevented the Council from choosing this alternative as the first step in the CRP process. For example, determinations about who should be found eligible to receive an initial allocation of quota, or, how much initial quota should be issued to each eligible applicant would have been exceedingly difficult. Also, the IFQ program for halibut and sablefish had not yet been implemented; therefore, any information or experience that would have been gained from

the operation of that program was not then available. For these reasons, the Council, at its meeting in September 1993, raised LLP to equal consideration with transferable IFQ as a management regime designed to meet the objectives of the CRP.

In January, 1994, the Council adopted its Advisory Panel's recommendations to expedite the LLP alternative. This decision was made because the industry lacked a consensus on the specific form of a transferable IFQ alternative and a concern about the amount of time that would be necessary to produce an analysis and implement a transferable IFQ program. The transferable IFQ alternative was not dropped completely; rather it was considered by the Council as a potential second step in the overall CRP process. Advocates for the LLP argued that it was a necessary first step in the CRP process because it could be implemented more expeditiously and it would provide stability in the fishing industry while a transferable IFQ system was analyzed and implemented.

At its meeting in April 1994, the Council received a LLP/IFQ proposal from its State of Alaska representative. This proposal contained an integrated, step-wise approach consisting of a LLP followed by an IFQ program. This proposal became the basis for subsequent Council actions that culminated in June 1995, with the Council's adoption of the LLP which, if approved by NMFS, would be implemented by this proposed rule.

By providing stability in the fishing industry and by identifying the field of participants in the groundfish and crab

fisheries, the Council recommended the LLP as an interim step toward a more comprehensive solution to the conservation and management problems of an open access fishery. Although the LLP is an interim step, it addresses some of the important issues in the problem statement developed for the CRP. The LLP, through the limits it places on the number of vessels that could be deployed in the affected fisheries, would place an upper limit on the amount of capitalization that could occur in those fisheries. This upper limit would prevent overcapitalization in those fisheries at levels that could occur in the future if such a constraint were not present.

The following is a detailed explanation of the components of the LLP for license limitation groundfish and crab. Differences between groundfish and crab portions of the LLP will be addressed in this explanation.

License Limitation Program - Operational Aspects

1. General

The LLP would limit access to the commercial groundfish fisheries in the EEZ off Alaska, except for demersal shelf rockfish east of 140° W. long. and sablefish managed under the IFQ program (license limitation groundfish). Demersal shelf rockfish east of 140° W. long. are excluded from the LLP because an alternative management program for that species currently is under consideration. The LLP also would limit access to the commercial crab fisheries in the BS/AI managed pursuant to the FMP for the Commercial King and Tanner Crab Fisheries in the

Bering Sea/Aleutian Islands.

2. Nature of Licenses and Qualification Periods

Licenses for license limitation groundfish would be issued to eligible applicants based on fishing that occurred from an eligible applicant's qualifying vessel in management areas (i.e., BSAI, GOA, or BSAI/GOA, or state waters shoreward of those management areas) during the GQP, and in endorsement areas defined by these regulations (i.e., Aleutian Islands, Bering Sea, Central Gulf, Southeast Outside, and Western Gulf, or state waters shoreward of those endorsement areas) during the EQP. These transferable licenses would authorize license holders to conduct directed fishing for license limitation groundfish species in the endorsement areas designated on each license. The GQP for license limitation groundfish is January 1, 1988, through June 27, 1992. The GQP would be extended through December 31, 1994, for vessels under 60 ft (18.3 meters) on which a legal landing of license limitation groundfish was made with pot or jig gear by that date. The Council recommended this extension so that vessels that entered the fishery at a later time, but that used gear that minimized bycatch loss and waste due to discard mortality, could be used for qualification. Qualification under this extension would be limited to one endorsement area, however, to ensure that capacity would not be unduly increased. Minimizing bycatch loss and waste due to discard mortality were important objectives of the CRP (see issues (6) and (7) of the problem statement above). Additionally, an eligible applicant,

whose qualifying vessel "crossed-over" to groundfish from crab under the provisions of the moratorium on entry by June 17, 1995, also would qualify under the GQP for license limitation groundfish.

The EQP for license limitation groundfish is January 1, 1992, through June 17, 1995. The area endorsement(s) designated on a groundfish license would authorize the holder to conduct directed fishing in the following areas: (1) Bering Sea Subarea; (2) Aleutian Islands Subarea; (3) Western Area of the Gulf of Alaska; (4) Central Area of the Gulf of Alaska and the West Yakutat District; and (5) Southeast Outside District.

The Council designed the dual qualification period, i.e., the GQP and the EQP, to account for past and present participation in the affected fisheries. Fishing during the GQP, which includes the qualification period for the moratorium on entry, would account for past participation, and fishing during the EQP would account for the participation that occurred up to the Council's final action on the LLP (June 17, 1995). The Council felt that it was critical that a qualifying vessel have fishing history in both periods, thereby showing past dependence and present participation, to qualify its owner on June 17, 1995 for a license. The Council recommended dual qualification periods for crab species licenses for the same reason.

Licenses for crab species would be issued to eligible applicants based on fishing that occurred from the qualifying vessel in the BS/AI during the GQP, and for a specific species in

an endorsement area, i.e., Adak brown king, Adak red king, Bristol Bay red king, C. Opilio and C. bairdi, Dutch Harbor brown king, Norton Sound red king and Norton Sound blue king, Pribilof red king and Pribilof blue king, and St. Matthew blue king, during the EQP. These transferable licenses would authorize license holders to conduct directed fishing for specific crab species in Federal waters of the specific areas designated on each license. The GQP for crab species is January 1, 1988, through June 27, 1992. Vessels that participated in the Norton Sound king crab fisheries and the Pribilof king crab fisheries would be exempt from the landing requirements of the GQP because: (1) the Norton Sound king crab fisheries began to be managed by the State of Alaska under a system of super-exclusive registration in 1993, and (2) the Pribilof king crab fisheries were closed from 1988 through 1992. Eligibility for those fisheries, therefore, would be based exclusively on participation during a separate EQP. Additionally, an eligible applicant whose qualifying vessel "crossed-over" to crab from groundfish under the provisions of the moratorium on entry by December 31, 1994, also would qualify under the GQP for crab species.

The EQP for crab species would vary among the 8 area/species endorsements. The EQP for (1) Pribilof red and Pribilof blue king and (2) Norton Sound red and Norton Sound blue king would be January 1, 1993, through December 31, 1994. The EQP for (3) C. opilio and C. bairdi (Tanner crab), (4) St. Matthew blue king, (5) Adak brown king, (6) Adak red king, and (7) Dutch Harbor

brown king would be January 1, 1992, through December 31, 1994. The EQP for (8) Bristol Bay red king would be January 1, 1991, through December 31, 1994. These endorsement period variations were designed to accommodate the different patterns of season openings and closures for specific crab species. For example, the Bristol Bay red king crab fishery was not open in 1994; therefore, a three-year participation window is provided by using a January 1, 1991, start date. The variations in the EQP for the Norton Sound king crab fisheries and the Pribilof king crab fisheries are explained in the GQP discussion above.

3. License Designations and Vessel Length Categories

All licenses for license limitation groundfish and crab species would be designated for use by either catcher vessels or catcher/processor vessels. This designation would prescribe the authorized behavior of the license holder on the vessel on which the license would be used. A catcher vessel designation on a groundfish license would authorize a license holder to conduct directed fishing for license limitation groundfish species and a catcher designation on a crab species license would authorize a license holder to conduct directed fishing for crab species. A license with a catcher vessel designation would not authorize a license holder to process license limitation groundfish or crab species. A catcher/processor vessel designation on a groundfish license would authorize a license holder to conduct directed fishing for, and process, license limitation groundfish. Similarly, a catcher/processor designation on a crab species

license would authorize a license holder to conduct directed fishing for, and process, crab species. A license with a catcher/processor designation also would authorize a license holder to conduct directed fishing for but not process license limitation groundfish or crab species, i.e., the license holder is not required to process his or her catch.

The Council also provided that persons could change the vessel designation on their licenses from a catcher/processor to a catcher vessel. This change in designation would be permanent; that is, once a vessel designation was changed from a catcher/processor vessel to a catcher vessel, the license holder would no longer be able to process license limitation groundfish or crab species using that license.

The length overall (LOA) of a vessel is defined at § 679.2 as the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments, measured in linear feet and rounded to the nearest foot. The following convention would be used when rounding the LOA to the nearest foot.

(1) When the amount exceeding a whole foot measurement is less than 6 inches, the LOA would be equal to that whole foot measurement. For example, if the horizontal distance of a vessel is 124 feet, 5 3/4 inches, the LOA of the vessel would be 124 feet.

(2) When the amount exceeding a whole foot measurement is

greater than 6 inches, the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 feet, 6 1/8 inches, the LOA of the vessel would be 125 feet.

(3) When the amount exceeding a whole foot measurement is exactly 6 inches, the LOA would be equal to that whole foot measurement if the number is even; however, if the number is odd, the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 feet, 6 inches, the LOA of the vessel would be 124 feet, but, if the horizontal distance of the vessel is 59 feet, 6 inches, the LOA of the vessel would be 60 feet.

All licenses for license limitation groundfish and crab species would be issued with a specific vessel length category designated on the license. These categories are: (1) category "A", which are vessels with a LOA of 125 feet (37.8 m) or greater; (2) category "B", which are vessels with a LOA from 60 feet (18.3 m) to or equal to 124 feet (37.5 m); and (3) category "C", which are vessels with a LOA of 59 feet (18 m) or less. A license would be issued with the appropriate specific vessel length category, based on the qualifying vessel's LOA on June 17, 1995.

Vessels participating under the moratorium on entry may be lengthened to their maximum length overall (MLOA). The vessel's MLOA is 1.2 times its LOA on June 24, 1992, except: (1) the MLOA is 1.2 times its LOA on the date reconstruction was completed for

a vessel that was under reconstruction on June 24, 1992; or (2) the MLOA is its LOA on June 24, 1992, or its LOA on the date reconstruction was completed for a vessel that was under reconstruction on June 24, 1992, if the vessel was 125 feet (37.8 m) or greater.

The vessel lengthening provisions of the moratorium on entry explained above provide some permissible flexibility to lengthen a vessel under the LLP. Specifically, a vessel may be lengthened to its MLOA under the moratorium on entry provided it was lengthened before June 17, 1995, or, if not, provided the lengthening does not cause the vessel to exceed the vessel's length category under the LLP. For example, a vessel that was 58 feet (17.7 m) on June 24, 1992, could be lengthened to 70 feet (21.4 m) under the provisions of the moratorium on entry. If the vessel had been lengthened before June 17, 1995, then the license issued would have a category "B" vessel length designation, which could be used on a vessel with an LOA from 60 feet (18.3 m) to 124 feet (37.5 m). However, if the vessel had been lengthened after June 17, 1995, then the license issued would have a category "C" vessel length designation (based on its LOA on June 17, 1995), which could be used on a vessel with an LOA of 59 feet (18 m) or less. Therefore, although vessels may be lengthened under the provisions of the moratorium on entry, vessels may not be lengthened after June 17, 1995, beyond their length categories and still be eligible for LLP fishing with the license issued based on that vessel's LOA on June 17, 1995. For vessels that

were lengthened under the provisions in the moratorium on entry, NMFS will require evidence of the date the vessel was lengthened, and the LOA of the vessel before and after that date. In addition, NMFS will require evidence of the vessel's LOA on June 17, 1995. In such circumstances, evidence bearing upon the vessel's LOA on the relevant dates could consist of a past marine survey, an original builder's certificate and any admeasurement documents submitted to the United States Coast Guard National Vessel Documentation Center, a certificate of registration that states the vessel's length, or other credible evidence. For the convenience of initial issues and future transferees, LLP licenses issued for a vessel will state its MLOA.

Difficulties have been reported with at-sea monitoring for compliance with vessel length categories based on the current definition of LOA at § 679.2. In order to obtain an accurate measurement of LOA, a vessel must be moored to a wharf or dock upon which the distance between the foremost part of the stem and the aftermost part of the stern can be carefully marked and measured. Such careful marking and measurement is not possible while the vessel is at sea. Consequently, at-sea enforcement of fishery regulations incorporating the LOA definition is impaired. Moreover, vessel owners and operators could be inconvenienced in some situations while enforcement officers arrange to have a vessel's LOA measured in port.

For these reasons, NMFS specifically requests public comments on alternative methods of determining or verifying LOA

while a vessel is at sea. In particular, NMFS requests comments on the efficacy of redefining LOA as follows: for a vessel documented by the United States Coast Guard, the Coast Guard documented length; for an undocumented vessel that has been issued a certificate of registration, the length that appears on the vessel's certificate of registration; and for a vessel that is neither documented or registered, the length as determined by the current definition of LOA at § 679.2. If the LLP is approved and implemented, the final rule may make these or other changes to the definition of LOA depending in large part upon the comments received during the public comment period.

4. Landing Requirements

The landings requirements to qualify owners of vessels to receive area endorsements for groundfish licenses would vary according to vessel length category, designated area, and (in one instance) vessel designation. These variations were intended by the Council to account for differences in the operational characteristics of the fisheries, differences in the geographical areas in which the fisheries are prosecuted, and differences in the social and economic conditions that affect participants in the fisheries from various coastal areas. For instance, the dependence of fishing communities around the Gulf of Alaska on small vessel fleets would be accounted for by requiring vessels less than 60 feet to record only a single landing during the appropriate time periods to qualify for a endorsement. The single landing requirement would be extended to catcher vessels

less than 125 feet in the Western Gulf because public testimony during Council consideration of the LLP indicated that local fleets did not participate in that area during the earlier portion of the EQP. Consequently, the Council concluded that excluding those fleets from adjacent fishing grounds through more stringent landing requirements would significantly harm local communities dependent on those fisheries. Catcher/processor vessels in the Western Gulf area that were 60 feet to less than 125 feet, because of their fishing capacity, would have the same landing requirements as all vessels of similar length in the Central Gulf area and Southeast Outside district. Also, based on information in the LLP analysis that multiple landing requirements in the Bering Sea subarea and Aleutian Islands subarea would unduly burden small vessels, but would not affect larger vessels, which contributed to the largest portion of capacity in the fleet in those areas, the Council determined that a single landing requirement would best reflect the operational characteristics of the fisheries in those areas. Finally, the Council received public testimony during consideration of the LLP that some vessels that qualified under the moratorium on entry entered into the fishery during the latter portion of the EQP. The Council recommended that a four landing provision be added to the EQP landing requirements in certain areas to account for participation of these vessels. The Council felt that four landings would be sufficient to show that a person intended to remain in the fishery and that their participation was not merely

speculative and opportunistic. Based on these considerations, the Council recommended the following landing requirements.

Vessels in all three length categories (i.e., "A", "B", and "C") would need only one landing of a license limitation groundfish species harvested in the appropriate area during the EQP to qualify their owner(s) for an Aleutian Islands area endorsement or a Bering Sea area endorsement. Also, the requirement of only one landing of license limitation groundfish species harvested in the appropriate area during the EQP would apply to vessels in vessel length category "C" for a Western Gulf area endorsement, a Central Gulf area endorsement, and a Southeast Outside area endorsement. Finally, the requirement of only one landing of license limitation groundfish species harvested in the appropriate area during the EQP would apply to vessels designated as catcher vessels and in vessel length category "B" for a Western Gulf area endorsement. Vessel length category "B" vessels would require one landing of license limitation groundfish species harvested in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or 4 landings of license limitation groundfish species harvested in the appropriate area between January 1, 1995, through June 17, 1995, for a Central Gulf area endorsement or a Southeast Outside area endorsement. This requirement also would apply to vessels designated as catcher/processor vessels and in vessel length category "B" for a Western Gulf area endorsement. Vessel length category "A" vessels would require

one landing of license limitation groundfish species harvested in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, for a Central Gulf area endorsement, a Southeast Outside area endorsement, and a Western Gulf area endorsement.

The landing requirements necessary to qualify owners of vessels to receive area/species endorsements for crab species licenses would vary according to crab species. These variations were included by the Council to ensure that incidental catches did not qualify a person for a license, e.g., incidentally caught Tanner crab with red or blue king, but allow for participation in some fisheries where a single landing may have indicated that a person intended to remain in a fishery, e.g., the Pribilof red and blue king crab fishery that was closed from 1988 through 1992. For the foregoing reasons, the following requirements were recommended by the Council. A red and blue king license would require one landing of the appropriate crab species harvested in the appropriate fishery during the EQP. A brown king and Tanner license would require three landings of the appropriate crab species harvested in the appropriate fishery during the EQP. The appropriate fishery is the area, as defined by these proposed regulations, that corresponds to the area/species endorsement for which the person is seeking qualification. Also, all landings must have been legally landed to qualify. A legal landing is any amount of the appropriate species that was harvested, delivered, and reported in compliance with Federal and state commercial

fishing regulations in effect at the time of landing.

5. License Recipients

Licenses would be issued to eligible applicants. Eligible applicants must have been eligible, on June 17, 1995 (the date of final Council action on the LLP), to document a fishing vessel under Chapter 121, Title 46, U.S.C. An eligible applicant would be the owner, on June 17, 1995, of a qualified vessel or, if the fishing history of that qualified vessel has been transferred to another person by the express terms of a written contract that clearly and unambiguously provides that the qualification for a license under the LLP has been transferred, the person to which the qualification was transferred by the express terms of a written contract. The Council recommended that NMFS recognize written contracts to the extent practicable; however, in the event of a dispute concerning the disposition of the license qualification by written contract, NMFS would not issue a license until the dispute was resolved by the parties involved. Also, the Council recommended the following procedure for determining the qualification for a license in the absence of a written contract: If the vessel was sold on or before June 17, 1995, the vessel's fishing history and license qualification would be transferred with the vessel; however, if the vessel was sold after June 17, 1995, the vessel's fishing history and license qualification would remain with the seller. Furthermore, only one license would be issued based on the legal landings of any qualified vessel. For instance, a vessel's fishing history could

not be divided so that multiple licenses could be issued based on separate qualifications created by that division. Also, if there had been multiple owners of a qualified vessel on June 17, 1995, then one license would be issued in the name of the multiple owners. A qualified vessel is one from which legal landings were made during the appropriate qualifying periods specified in § 679.4(h) (4) and (5) of the proposed rule.

A successor-in-interest would be eligible to apply for a license in the place of eligible applicant if the eligible applicant, because of death or dissolution, could not apply for the license.

NMFS will assemble a comprehensive database containing relevant data on landings, vessels, and ownership. That database will be the "Official Record" regarding eligibility for a license. Persons that appear to be eligible, premised on the information contained in the Official Record, would be notified of their status and invited to request an application from NMFS. Other persons, who may not appear eligible, could also request an application from NMFS. On receipt of the request for application, NMFS would prepare an application premised on information in the Official Record and send it to the applicant. Applicants would then have an opportunity to review the information provided, make changes if appropriate, and return the completed application to NMFS. No license would be issued unless the application was returned to NMFS, and NMFS determined the applicant to be eligible for a license.

The Official Record would be presumed to be correct by NMFS. Applicants who disagreed with the information in the Official Record, i.e., applicants who contended that the information was incomplete or incorrect, or both, would have an opportunity to demonstrate the validity of their claims. For example, if the official record did not contain records of landings for a vessel during the GQP, a person could provide State of Alaska fish tickets to demonstrate those landings.

Applicants would be notified of the disposition of their application, i.e., whether the application was approved, partially approved, or not approved because of insufficient information to verify the claims. If the application is approved, then a license would be issued to the applicant. If the application is partially approved, or not approved, the applicant would be provided an opportunity to submit evidence to verify all claims in the application that were not approved. Evidence submitted in a timely matter would be reviewed and used as the basis to approve or disapprove claims and/or applications for which the evidence was submitted. Applicants who did not submit corroborating evidence within the time period provided would have either their unsubstantiated claims denied, in the case of applications partially approved, or their applications denied, in the case of applications not approved.

Application or claim denials would be initial administrative determinations that could be appealed under 50 CFR part 679.43. If the appeal is accepted, the applicant would receive a non-

transferable license that would authorize that person to conduct directed fishing for license limitation groundfish or crab species based on any approved portion of the application. Further, this non-transferable license may also authorize directed fishing for license limitation groundfish or crab species based upon denied claims accepted for appeal, until the appeal is resolved. If an applicant's appeal is denied, then that applicant would not receive a non-transferable permit. In the case of partially approved applications, the applicant would receive a license reflecting the previously approved claims upon the denial of an appeal.

6. Transfer of Licenses

Licenses would be transferable to persons able to document a fishing vessel under Chapter 121, Title 46, U.S.C. A license could be used on any vessel that complies with the vessel designation and vessel length category originally assigned to the license, except, licenses could be used on vessels equal to, or shorter than, the MLOA designated on the license, regardless of the vessel length category. For example, a license with an MLOA of 145 feet (44.2 m) could be used on a vessel 145 feet (44.2 m) or shorter, whether the vessel is in the "A", "B", or "C" category, as long as the vessel conforms with other requirements, such as vessel designation and area endorsement. The Council included this provision to allow for increased transfer flexibility for licenses.

Transfers must be requested on a form provided by NMFS.

Transfers would not be approved unless sufficient information was provided on the form and all of the requirements in proposed § 679.4(h)(7) were met. Only transfers approved by NMFS would be valid. The leasing of licenses would be prohibited.

7. License Severability and Ownership Caps

Area endorsements for groundfish licenses or area/species endorsements for crab species licenses would not be severable from the license. For example, a person transferring a groundfish license with a Southeast Outside area endorsement and a Central Gulf area endorsement would necessarily transfer both area endorsements with the license and could not keep one area endorsement while transferring the other. Similarly, vessel designations and vessel length categories would not be severable from the license. The non-severability of licenses was recommended by the Council to prevent increased capacity in the affected fisheries.

Also, for at least three years after implementation, a groundfish license and crab species license initially issued to a person would not be severable if those licenses resulted from the legal landings of the same qualifying vessel. The Council intends to review the issue of severability 3 years after implementation of the LLP. After that review, if the Council decides that the reason for non-severability, i.e., excess effort in the fisheries, has been ameliorated, then the Council may remove the prohibition on severing initially issued groundfish and crab species licenses. Groundfish licenses and crab species

licenses obtained by transfer could not be combined with any other licenses held by a person and would remain separate licenses.

A person would be limited to a maximum of 10 groundfish licenses and 5 crab species licenses, unless that person is initially issued more than those numbers of licenses, in which case the person could hold more licenses than specified by the license limit. However, a person above the limit could not receive a new groundfish license or a crab species license by transfer until the number of licenses held by that person is below the maximum number for the respective limits. After obtaining transfer eligibility by dropping below the license limit, a person could not exceed that limit, notwithstanding the earlier status of being allowed to exceed that limit on initial issuance. These limits were recommended by the Council to prevent any person from obtaining an excessive share of harvest privileges in the affected fisheries.

8. Other Provisions

The Council included several other provisions in the proposed LLP. First, the Council recommended that persons targeting species not included in the groundfish portion of the LLP and who are currently allowed to land incidentally taken license limitation groundfish species will be authorized under the LLP to continue landing bycatch amounts of license limitation groundfish species without a groundfish license. This provision is intended to avoid the waste that occurs when bycatch is

required to be discarded. This is especially true for programs like the IFQ program for sablefish and halibut, where the targeted species and license limitation groundfish species may be found in the same habitat area.

Second, the Council recommended that the owner of a vessel who qualifies for a license under the LLP but whose vessel was lost or destroyed is still eligible for the license and accompanying endorsements, designation, and vessel length category. This license, however, could not be used for harvesting applicable species unless the vessel on which the license is used conforms with all the requirements of the LLP.

Third, the Council recommended that an "unavoidable circumstances" provision be included in the LLP. This provision would allow the owner of a vessel on June 17, 1995, to receive a license, even though the vessel on which the application would be based did not meet all of the landing requirements necessary to qualify that owner for a license. That owner, hereafter applicant, would need to provide evidence that the vessel made a legal landing of license limitation groundfish species, or crab species if applicable, between January 1, 1988, and February 9, 1992. The applicant would also need to provide evidence that, due to factors beyond the control of the owner of the vessel at that time, the vessel was subsequently lost, damaged, or unable to qualify the applicant for a license under the criteria in § 679.4(h) (4) or (5). Furthermore, the applicant must demonstrate:

(1) that the owner of the vessel at that time held a

specific intent to conduct directed fishing for license limitation groundfish (crab species) with that vessel during a specific time period in a specific area;

(2) that the specific intent to conduct directed fishing for license limitation groundfish (crab species) with that vessel was thwarted by a circumstance that was:

(a) unavoidable;

(b) unique to the owner of that vessel, or unique to that vessel; and

(c) unforeseen and reasonably unforeseeable to the owner of the vessel;

(3) that the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish (crab species) actually occurred;

(4) that, under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish (crab species); and

(5) that license limitation groundfish (appropriate crab species) was harvested on the vessel in the specific area that corresponds to the area endorsement (area/species endorsement) for which the claimant is applying and the harvested license limitation groundfish (crab) was legally landed after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

If all these criteria are met to the satisfaction of NMFS, a

license may be issued for the appropriate fishery and endorsement area. This provision is not designed to be a "loop hole" through which owners of vessels that have not met the qualification requirements could be issued licenses. If an applicant fails to demonstrate that an unavoidable circumstance prevented the vessel from meeting the qualifications in § 679.4(h)(4) or (5), NMFS would not issue the license that the applicant seeks.

Fourth, the Council recommended that licenses be issued to owners of vessels that made a legal landing of license limitation groundfish species harvested during the GQP in one management area and a legal landing of license limitation groundfish species harvested during the EQP in another management area. For example, consider a vessel in length category "C" that made only two legal landings of license limitation groundfish species. The first legal landing was of license limitation groundfish species harvested in the BSAI on December 31, 1991, and the second legal landing was of license limitation groundfish species harvested in the Central Gulf endorsement area on June 16, 1995. Although the owner of the vessel would not qualify for a license under the standard eligibility criteria, i.e., making a landing during the GQP and the EQP of license limitation groundfish species harvested in the same management area, this owner would qualify for a license under the alternative method of eligibility. Section 679.4(h)(4)(iv) and (v) provides that if a vessel makes a legal landing during the GQP (and not the EQP) of license limitation groundfish species harvested in one management area

and a legal landing during the EQP (and not the GQP) of license limitation groundfish species harvested in the another management area, then the owner of the vessel would qualify for a license for the management area in which the vessel harvested license limitation groundfish species during the EQP. The owner of the vessel in the example above would receive a license for the Gulf of Alaska with a Central Gulf area endorsement.

Fifth, the Council recommended a no-trawl zone east of 140° W. longitude (Southeast Outside District). Owners of vessels that qualify for a groundfish license for the Gulf of Alaska with a Southeast Outside area endorsement would not be able to use trawl gear in that area regardless of whether trawl gear were used to harvest license limitation groundfish species during the EQP. The proposed no-trawl zone is designed to prevent preemption conflicts between gear types, prevent fixed gear loss, and to provide for the socio-economic needs of communities dependent on the local fisheries in the Southeast Outside District. Three types of preemption can occur among competing gear types. Direct preemption occurs when competing gear types target the same species. Rockfish species such as roughey, other slope, and thornyhead rockfish are examples of species that would be targeted by trawl gear and fixed gear fisheries in the Southeast Outside District. Establishing a no-trawl zone would eliminate direct preemption by trawl gear. Indirect preemption occurs when one gear type impacts or precludes a target fishery by another gear type by incidentally catching the target species.

Incidental catches of species made by trawl gear could preclude fixed gear target fisheries that are critical to the socio-economic viability of small communities in Southeast Alaska. Indirect preemption by trawl gear also would be eliminated by restricting the Southeast Outside Regulatory District to fixed gear only. Grounds preemption occurs when the operator of a vessel using one type of fishing gear chooses not to fish in an area because of the gear type being used by the operator of another vessel in the same area. For example, an operator of a vessel using longline gear may be hesitant to deploy gear in an area in which trawl gear will be used because of the possibility of the longline gear being lost or damaged by the trawl gear. This third type of preemption also would be eliminated by the establishment of a no-trawl zone. Fixed gear loss occurs when trawl gear is towed over a fixed gear set. This loss can lead to higher fishing mortality due to "ghost fishing" (i.e., fishing that occurs when fish are caught on unretrieved gear).

9. Operator Reporting System

The Council recommended establishing an Operator Reporting System so that information on how many operators are employed in the fisheries and how much fish they harvest could be collected. This information will assist the Council in determining alternative fishing allocation privileges when new fisheries management regulations are developed. All groundfish and crab species license holders would be required to provide NMFS with information about operators of vessels on which the holders'

licenses were used, including the operator's name, address, and service record. The term "operator" is defined at 50 CFR 600.10 as the master or other individual aboard and in charge of a vessel. There must be at least one operator aboard a vessel that is conducting directed fishing for license limitation groundfish or crab species; however, it is possible that more than one operator may be aboard a vessel at the same time. If so, information must be provided for all operators aboard. Also, if the license holder is acting as the operator, information about that activity should be provided. The service record of an operator is information about the operator's tenure aboard a vessel and includes dates and duration aboard the vessel and how much fish was harvested during the operator's tenure.

Western Alaska Community Development Quota Program

Background Information

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fishery activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ program began in 1992 with the pollock CDQ fishery, which was developed by the Council as part of Amendment 18 to the BSAI FMP. The approved portion of Amendment 18 and the final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) allocated pollock for the CDQ program only for a temporary period from 1992 through 1995. The amendment allocated to a pollock CDQ reserve, one-half of the 15 percent of

the pollock TAC that is placed in the non-specific reserve for each subarea or district of the BSAI.

Eligible CDQ communities could apply for a CDQ allocation from the CDQ reserve by submitting a Community Development Plan (CDP). Regulations implementing the CDQ program for 1992 and 1993 (57 FR 54936, November 23, 1992) specified the process for applying for the CDQ program and the required contents of the CDPs. A subsequent regulatory amendment (58 FR 32874, June 14, 1993) implemented the CDQ program for 1994 and 1995.

The Council recommended re-authorizing the pollock CDQ program for an additional 3 years as part of Amendment 38 to the BSAI FMP, and NMFS approved this amendment on November 28, 1995. Regulations implementing the pollock CDQ program for 1996 through 1998, were published on December 12, 1995 (60 FR 63654, corrected 61 FR 20, January 2, 1996).

The Council recommended adding the halibut and fixed gear sablefish (H/S) fisheries to the CDQ program beginning in 1995, as part of the IFQ program. The IFQ final rule (58 FR 59375, November 9, 1993) implemented the H/S CDQ program with no expiration date. More background and explanation of the pollock and H/S CDQ programs can be found in the preambles to the above final rules.

Regulations implementing the pollock CDQ program were codified at 50 CFR part 675, and regulations implementing the H/S CDQ program were codified at 50 CFR part 676. As part of a nation-wide effort to improve all regulations governing fishing

in the EEZ off Alaska, NMFS consolidated both sets of CDQ regulations into one set of regulations at 50 CFR part 679, subpart C (61 FR 31228, June 19, 1996).

At its meeting in June 1995, the Council recommended a further expansion of the CDQ program. The Council recommended that 7.5 percent of all BSAI groundfish TACs not already covered by a CDQ program along with a pro-rata share of the prohibited species catch (PSC) limit, and 7.5 percent of the BS/AI crab be allocated to CDQ communities as defined in the current CDQ program. No details about the program's implementation were given at that time, but the Council directed that it should be designed after the current CDQ program for pollock. Further, the Council did not recommend a termination date as currently exists for the pollock CDQ program.

Based on the Council's recommendation to expand the CDQ program to groundfish in the BSAI and crab in the BS/AI, NMFS prepared a CDQ Program Design. The CDQ Program Design was an outline for implementing the groundfish and crab CDQ programs and for combining them with the existing pollock and H/S CDQ programs. NMFS submitted the CDQ Program Design to the Council for review at its meeting in April 1996 and requested clarification on several CDQ policy issues. This proposed rule is based on that CDQ Program Design and the clarification provided by the Council.

Expectations for Monitoring the CDQ Fisheries

The level of accountability for catch under the multispecies

CDQ program determines the complexity of the monitoring program and the resulting cost to the CDQ groups, their industry partners, and the public. This proposed rule is based on the NMFS's description and the Council's approval of a CDQ program design in which individual CDQ groups would be eligible to receive allocations of all groundfish TAC species or species groups, and prohibited species to support their groundfish, halibut, and crab CDQ.

Under the proposed multispecies CDQ program, NMFS would be responsible for monitoring and enforcement of the groundfish and halibut CDQs. The State of Alaska (State) would be responsible for monitoring and enforcement of the crab CDQs under authority contained in the FMP for the Commercial King and Tanner Crab Fisheries in the BS/AI.

In the CDQ fisheries managed by NMFS, all groundfish, prohibited species, and halibut catch and bycatch in CDQ fisheries, including the existing pollock, sablefish, and halibut CDQ fisheries, would accrue to CDQ or PSQ allocated to the CDQ group. Catch of groundfish or halibut in excess of a CDQ or PSQ would be prohibited under § 679.7(d)(6)). Catch of the salmon, herring, and crab prohibited species quotas would result in the same time and area closures that exist for these prohibited species in the open access groundfish fisheries. Failure to account for all allocated bycatch species in the groundfish or halibut CDQ fisheries would result in the CDQ program exceeding groundfish and halibut PSQ allocations recommended by the

Council. The groundfish CDQ program would not have a "prohibited species status" that would allow for continued fishing for one groundfish species once the quota of another groundfish species has been reached. No provision would be made to allow exceedances from the CDQ fisheries to accrue to TACs and PSC limits in the non-CDQ fisheries.

Based on this program design, the multispecies groundfish and halibut CDQ program would require a higher level of accountability than any fishery NMFS is currently managing off Alaska. The existing pollock, sablefish, and halibut CDQ fisheries and the fixed gear halibut and sablefish IFQ fisheries are target fishery-based quota programs that do not require accounting for all TAC and PSC species in the catch.

Combining Existing and Proposed CDQ Programs

NMFS proposes to combine the existing pollock and fixed gear halibut and sablefish CDQ programs with the proposed groundfish and crab CDQ programs into a single multispecies CDQ program. A combined CDQ program would simplify the CDP process, provide for full accounting of all CDQ and PSQ in the groundfish and halibut CDQ programs, apply NMFS's monitoring requirements equitably, and decrease the administrative burden on the CDQ groups, the State, and NMFS.

Under the proposed multispecies CDQ program, each CDQ group would submit one CDP for all species and CDQ allocations for all species would be made every three years. Requirements for recordkeeping and reporting, observer coverage, and equipment for

improved catch estimates would be applied equally to all participants in the groundfish and halibut CDQ fisheries based on vessel or processor type, not on target fishery. For example, requirements for a longline vessel harvesting sablefish CDQ would be the same as the requirements for that vessel harvesting Pacific cod CDQ.

At its April, 1996, meeting, the Council recommended that full integration of the catch monitoring and equipment requirements for the groundfish and halibut CDQ fisheries should be delayed until 1999. Therefore, 1998 would be a transition year from the existing separate CDQ programs by target species to an integrated CDQ program in which all participants in the groundfish and halibut CDQ fisheries would follow the same catch monitoring and reporting requirements specified by vessel and processor type rather than by CDQ target fishery. In 1998, CDQ vessels and processors participating in the pollock and H/S CDQ programs would be exempt from the groundfish CDQ program catch monitoring regulations.

The Council's recommendation would result in four categories of CDQ fisheries in 1998 and two categories in 1999 and future years. The four categories for 1998 would be: (1) the pollock CDQ fisheries; (2) the fixed gear halibut and sablefish CDQ fisheries; (3) the groundfish CDQ fisheries which would exclude pollock and fixed gear sablefish; and (4) the crab CDQ fisheries. The multispecies CDQ fisheries would be divided into two categories for 1999 and future years: (1) the groundfish and

halibut CDQ fisheries managed by NMFS; and (2) the crab CDQ fisheries managed by the State.

Description of CDO species

The multispecies CDQ program includes the existing CDQ species of pollock, fixed-gear sablefish and halibut; and the proposed CDQ groundfish, crab, and PSQ species. The proposed CDQ groundfish species include all other BSAI groundfish species or species groups that have an annually specified TAC and are not part of the current CDQ program. The proposed PSQ species are defined at § 679.21(b) (1) and include any of the species of Pacific salmon (Oncorhynchus spp.), steelhead trout (Oncorhynchus mykiss), halibut, Pacific herring (Clupea harengus pallasii), king crab, and Tanner crab. The proposed crab CDQ species include all king and Tanner crab species in the BS/AI that have a GHLL specified by the State.

CDO Reserves, Allocations, and Quotas.

The multispecies CDQ program would assign a portion of each CDQ species and PSQ species to a separate CDQ reserve. The following shows the amount assigned to each CDQ reserve for the exclusive use of the CDQ program.

(1) Pollock CDQ reserve. One-half of the pollock TAC that is placed in the non-specific reserve for each subarea or district of the BSAI would be assigned to the pollock CDQ reserve.

(2) Halibut CDQ reserve. A separate halibut CDQ reserve would be implemented for the following IPHC management areas:

(A) Area 4B. In IPHC regulatory area 4B, 20 percent of the annual halibut quota would be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area.

(B) Area 4C. In IPHC regulatory area 4C, 50 percent of the halibut quota would be made available for the halibut CDQ program to eligible communities physically located in IPHC regulatory area 4C.

(C) Area 4D. In IPHC regulatory area 4D, 30 percent of the halibut quota would be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC regulatory areas 4D and 4E.

(D) Area 4E. In IPHC regulatory area 4E, 100 percent of the halibut quota would be made available for the halibut CDQ program to communities located in or proximate to IPHC regulatory area 4E.

(3) Sablefish CDQ reserves. Two sablefish CDQ reserves would be implemented:

(A) Fixed gear sablefish CDQ reserve. NMFS would assign 20 percent of the fixed gear allocation of sablefish in each subarea or district of the BSAI as a fixed-gear sablefish CDQ reserve. Sablefish in this reserve could be harvested only by vessels using fixed gear as required by the FMP amendment implementing the H/S CDQ program.

(B) Sablefish CDQ reserve. NMFS would assign seven and one-half percent of the trawl gear allocation of sablefish in each

subarea or district of the BSAI as a sablefish CDQ reserve. Sablefish in this reserve could be harvested by vessels using any authorized gear because no gear restrictions were recommended by the Council for the multispecies CDQ program.

(4) Groundfish CDO reserves. NMFS would assign one-half of the amount of each groundfish TAC that is placed in the reserve for each subarea or district of the BSAI to a separate CDQ reserve for each subarea or district of the BSAI. The groundfish CDQ reserves do not include sablefish.

(5) PSQ reserves. Seven and one-half percent of each of the PSC species defined at § 679.21(b)(1) will be assigned to a separate PSQ reserve.

(6) Crab CDQ reserves. The Council's motion on crab CDQs in June, 1995, stated that 7.5 percent of the crab GHLS in the BS/AI would be made available to the CDQ program at the beginning of the multispecies CDQ program's implementation. However, the reauthorization of the Magnuson-Stevens Act, which became effective in October, 1996, requires that the crab CDQ program be phased-in according to the following percentages: 3.5 percent for 1998, 5.0 percent for 1999, and 7.5 percent for the year 2000 and thereafter. Therefore, these proposed regulations have been written to reflect the requirements of the Magnuson-Stevens Act.

A CDQ allocation is a percentage of a CDQ reserve that is assigned to a CDQ group when NMFS approves a proposed CDP. A CDQ means the annual amount of a particular CDQ species that a CDQ group is permitted to catch based on a CDQ allocation that has

been requested in a proposed CDP and approved by NMFS. A PSQ allocation means a percentage of a PSQ reserve that is assigned to a CDQ group. PSQ means the annual amount of a prohibited species that is allocated to a CDQ group based on a PSQ allocation.

CDQ Program Responsibilities

The proposed multispecies CDQ program would be a federal program in which the fishing privileges for CDQ are temporarily allocated by NMFS to the CDQ groups. In return, the CDQ groups would be responsible for managing the CDQ harvesting and the CDQ projects as outlined in the CDPs on behalf of the member communities. NMFS would have no obligation to allocate future CDQ or PSQ based on past allocations, and CDQ and PSQ fishing privileges expire with the expiration of a CDP. NMFS would base its awards of CDQ and PSQ allocations to the CDQ groups on the merits of the proposed CDPs.

The proposed CDPs, developed by the CDQ groups, would be the means for requesting CDQ and PSQ allocations from NMFS. Although NMFS would award the CDQ allocations to the CDQ groups, the CDQ groups would make the allocation requests on behalf of the eligible community(ies) that is (are) participating in the CDQ group. Therefore, a CDQ group would have a fiduciary responsibility to manage its CDQ allocations, CDQ projects, and assets in the best interests of the participating CDQ community(ies).

A CDQ community would be represented in a CDQ group in two

ways. First, each CDQ group's Board of Directors (Board) is required to have one voting member from each CDQ community which is elected by each community. Second, the managing organization (either the Board or a managing group contracted by the Board) must have a letter of support from each participating community before NMFS can award a CDQ allocation to the CDQ group.

Two courses of action would be available to a CDQ community to assure that the CDQ group's business decisions represent the interests of the CDQ community. First, the community could elect a different board member who will vote on the Board in a way that more closely reflects the community's wishes. During the election of a Board member, the CDQ community has the opportunity to review the activities of its board member and its CDQ group, and evaluate its performance. Second, a CDQ community could refuse to issue a letter of support for the CDQ managing organization for a proposed CDP and join another CDQ group or form a new CDQ group.

A CDQ group may manage the day-to-day business affairs of its CDP itself through its board of directors, or may choose to contract with a managing organization. If a CDQ group contracts with a managing organization, the CDQ group is responsible for oversight of the managing organization's activities, and is held accountable by NMFS for all actions by the managing organization that are related to CDP management.

CDQ Application Process

Under the proposed multispecies CDQ program, the State would

announce a CDQ application period, during which the CDQ groups would submit proposed CDPs to the State. The State would then hold a public hearing where the CDQ groups would present their proposed CDPs and give the affected public an opportunity to comment. After the public hearing, the State would develop recommendations for the approval of proposed CDPs, consult with the Council, and submit the State's recommendations to NMFS for review and approval or disapproval.

The CDP would be submitted to NMFS by October 7 to provide NMFS sufficient time to review the CDPs and to approve final CDPs and their CDQ allocations by December 31 of the application year.

The Community Development Plan

The CDP would provide information to the State and NMFS about the eligible communities, the managing organization, the CDQ projects, the requested allocation of CDQ and PSQ species, the harvesting and processing partners, and how the CDQ group will account for CDQ and PSQ catches by these partners.

For each allocation request, § 679.30(a)(4) would require the CDP to identify the primary target fisheries by species and gear type, percentage of the target species requested, and the percentage of CDQ and PSQ species needed as bycatch in these fisheries.

The fishing plan (part of the CDP) described at § 679.30(a)(5) would be used to obtain information about the harvesting and processing partners in the groundfish and halibut CDQ fisheries. Specifically, the fishing plan would be required

to contain a list of vessels and processors that the CDQ group proposes to authorize to participate in their groundfish and halibut CDQ fisheries and information about how the catch of CDQ and PSQ by these vessels and processors will be determined. The U.S. Coast Guard and NMFS Enforcement would use the list of eligible vessels and processors to determine whether vessels or processors were legally participating in the CDQ fisheries.

A vessel or processor would be required to be listed as an eligible vessel in an approved CDP in order to harvest or process groundfish or halibut CDQ for a particular CDQ group. In addition to this requirement, any vessel or processor with special equipment requirements such as certified scales to weigh catch or an observer sampling station also would be required to undergo a vessel or plant inspection and be permitted by NMFS to participate in the CDQ fisheries. Vessels or processors with no additional equipment requirements would not be required to be permitted by NMFS. They would be eligible to participate in the CDQ fisheries upon approval of a CDP in which they were listed. More information about vessel and processor categories, equipment requirements, vessel and plant inspections, and permitting requirements are contained in a later section.

The fishing plan also would provide information to NMFS about how the CDQ group intended to make the estimates of CDQ and PSQ catch that would be reported to NMFS on the CDQ Catch Report. NMFS proposes to require each CDQ group to commit to a specific source of data and method for determining the weight or numbers

of CDQ and PSQ catch by vessels fishing under its CDP, to identify this method in their CDP, and to amend the CDP before changing the source of data or method. CDQ groups would be prohibited from using any method other than that approved by NMFS in the CDP to report CDQ and PSQ catch on the CDQ Catch Report.

The CDQ group could propose to use NMFS's preferred methods for estimating catch which would be described at § 679.32(e)(3). The CDQ group could request NMFS to consider a catch accounting method that provided for sorting and weighing by species or larger sample sizes on processor vessels. The CDQ group would have to demonstrate that the space was available on the processor vessel to store, sort, and weigh the proposed sample sizes and that additional observers would be provided to accomplish the increased sampling or monitoring of sorting and weighing by species. No alternatives would be accepted for equipment requirements such as an observer sampling station or a scale to weigh total catch on trawl catcher/processors and motherships. If the fishing plan proposed any method other than the NMFS preferred method, NMFS would review the proposal and determine whether it provided adequate estimates of CDQ and PSQ catch.

NMFS proposes to require the CDQ groups to commit to the source of information and the procedures that will be used to estimate CDQ and PSQ catch for several reasons. First, discussion of the specific catch accounting requirements and the differences among the various vessel and processor types will help to identify and resolve conflicts prior to the start of CDQ

fishing. NMFS wants to minimize the conflicts and decisions that have to be addressed between the harvesting and processing partners and the CDQ observers after fish have been harvested. Second, NMFS wants to provide a means for vessels and processors to suggest alternative catch accounting methods that may improve catch estimates or work better for a particular vessel or plant. However, if different methods will be used, NMFS needs time to examine the proposal and specify conditions necessary to assure accurate CDQ catch estimates and reasonable working conditions for the CDQ observers. Finally, determining how catch estimates will be made in advance of the fishery will improve observer training.

Management of the Groundfish and Halibut CDQ Fisheries

Closures

All closures for the BSAI listed in § 679.22(a) would apply to the CDQ fisheries. In that section, the CDQ fisheries are specifically exempted from closure of the catcher vessel operational area to catcher/processors.

Seasons

The provision for closure of all trawl fisheries in the BSAI between January 1 and January 20 at § 679.23(c) would remain in effect for the CDQ fisheries.

Transfers of CDQ allocations or CDQ

Once a proposed CDP is approved by NMFS and becomes effective, the proposed multispecies CDQ program would allow a CDQ group to transfer a CDQ allocation, CDQ, PSQ allocation, or

PSQ, to another CDQ group under certain restrictions.

The following describes the proposed transfer process.

CDQ Allocation. Any amount of a CDQ allocation may be transferred by a substantial amendment. The requirements for a substantial amendment to a CDP are proposed at § 679.30(h)(4). The transfer becomes valid on January 1 of the calendar year following the transfer, and the transfer is valid for the duration of the CDP.

CDQ. CDQ may be transferred in two different ways, and the transfer is valid only for the calendar year in which the transfer occurs. First, 10 percent or less of a CDQ may be transferred in a calendar year by a CDQ group using the technical amendment process. The requirements for a technical amendment to a CDP are proposed at § 679.30(h)(5). Second, more than 10 percent of a CDQ may be transferred through the substantial amendment process.

PSQ allocations. PSQ allocations may be transferred by substantial amendment, but the transfer must be accompanied by a transfer of a CDQ allocation(s). NMFS will accept substantial amendments for the transfer of PSQ allocations only during the month of January. The transfer of PSQ allocations is effective for the duration of the CDP.

PSQ. PSQ may be transferred in the same way as PSQ allocations except that the transfer of PSQ is effective only for the remainder of the calendar year in which the PSQ transfer occurs.

CDQ Non-Specific Reserve

Bycatch of some species is expected to constrain the groundfish CDQ fisheries and may even result in a CDQ group reaching the CDQ or PSQ for a bycatch species before it has harvested all of its target species CDQ. Therefore, NMFS proposes to create a non-specific reserve within the CDQ program to reduce the potential for the catch of some groundfish species to limit overall CDQ catch. CDQ species eligible to be placed in the non-specific reserve are low-valued species for which no target fishery currently exists, but for which there is a sufficient buffer between the TAC and ABC. A buffer between TAC and ABC is required because use of the non-specific reserve may result in overall CDQ catches for a particular species in excess of the 7.5 percent allocation to the CDQ program. Only squid, arrowtooth flounder, and "other groundfish" meet the criteria for the CDQ non-specific reserve.

Each year, 15 percent of each CDQ group's arrowtooth flounder, squid, and "other groundfish" CDQ would be placed into a non-specific reserve for each CDQ group. A CDQ group would apply for a release from its CDQ non-specific reserve to its squid, arrowtooth flounder, or "other species" CDQ through the technical amendment process.

Prohibited Species Catch Management

The management of prohibited species catch in the groundfish CDQ fisheries would be modeled after the requirements of the non-CDQ groundfish fisheries. One exception would be that

halibut PSQ would not be allocated between trawl and non-trawl gear so that CDQ groups have more flexibility in their use of halibut PSQ. Catches of herring, salmon, or crab PSQ species by vessels fishing with non-trawl gear and catch of halibut PSQ by vessels using pot gear would not accrue to the respective PSQs. Only catch of non-chinook salmon by vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area would accrue to the non-chinook salmon PSQ. Only catch of chinook salmon by vessels using trawl gear between January 1 and April 15 would accrue to the chinook salmon PSQ.

Attainment of the herring, salmon, and crab PSQs by a CDQ group would result in the same time and area closures required for the open access fisheries in § 679.21. Specifically, vessels fishing under a CDP will be prohibited from:

1. Continuing to use trawl gear to harvest groundfish CDQ in Zone 1 once the PSQ for red king crab or *c. bairdi* Tanner crab in Zone 1 is reached.

2. Continuing to use trawl gear to harvest groundfish CDQ in Zone 2 once the PSQ for *c. bairdi* Tanner crab in Zone 2 is reached.

3. Continuing to use trawl gear to harvest groundfish CDQ in Herring Savings Areas (HSA) once the herring PSQ has been reached.

4. Continuing to use trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area between January 1 and April 15 once the chinook salmon PSQ has been reached.

5. Continuing to use trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 once the non-chinook salmon PSQ has been reached.

The CDQ representative would be responsible for monitoring the catch of prohibited species by vessels fishing under its CDP and for assuring that vessels using trawl gear stop fishing in the closed areas once the PSQ has been reached.

Attainment of the halibut PSC limit in the non-CDQ groundfish fisheries triggers closure of groundfish fishery categories to directed fishing. However, no fishery categories or gear allocations are proposed for halibut PSQ. Therefore, the halibut PSQ would be treated the same as groundfish or halibut CDQ. The CDQ groups would be prohibited from exceeding their halibut PSQ.

NMFS is proposing that catcher vessels using trawl gear be required to retain all salmon and herring PSQ and deliver them to a processor where they would be sorted and weighed on a certified scale. Retention of salmon and herring PSQ would eliminate the need for the vessel operator or the CDQ observer to estimate the weight or numbers of at-sea discards, thereby improving accounting for these PSQ species. Unlike halibut and crab, salmon and herring are believed to have 100 percent mortality when harvested with trawl gear, so no additional mortality of these species is anticipated by the retention requirement.

Section 679.21 would be revised to allow the retention of herring and salmon PSQ by catcher vessels using trawl gear in the

CDQ fisheries until the PSQ is sorted and weighed on a certified scale by a processor. The State of Alaska would have to change its regulations to allow the retention and delivery of these species to shoreside processing plants.

Improved Retention/Improved Utilization

Regulations governing the retention or utilization of groundfish species in the non-CDQ fisheries also would apply to the groundfish CDQ fisheries.

Vessel Incentive Program

NMFS proposes that catch in the groundfish CDQ program would not be subject to the Vessel Incentive Program (VIP) regulations. CDQ groups would be receiving individual allocations of prohibited species catch allowances and would be responsible to manage their fisheries within these limits.

Recordkeeping and Reporting Requirements for CDQ Groups

Each CDQ group would be responsible to collect and report catch data for all vessels and processors participating in their CDQ fisheries. This would enable each group to directly manage its CDQ fisheries and to be held accountable for staying within CDQ and PSQ allocations.

All vessels and processors participating in the CDQ fisheries would be required to continue to comply with all other recordkeeping and reporting requirements in § 679.5, such as logbooks and weekly production reports. Among other requirements, CDQ catch must be reported separately from other catch on these reports and the CDQ group number must be

identified.

The CDQ Check-In/Check-Out Report

The CDQ representative would submit a CDQ check-in/check-out report to notify NMFS when vessels participating in the CDQ fisheries begin and stop CDQ fishing throughout the year. This notification is necessary in order to assure that the CDQ representative and NMFS are aware of the activities of all CDQ vessels. The notification also would help track whether the appropriate CDQ catch reports are being submitted.

A check-in report would be required prior to the first CDQ fishing of the year and any time during the year CDQ fishing started again after a CDQ check-out report had been submitted. A CDQ check-out report would be required when any vessel switched between CDQ and non-CDQ fishing, stopped CDQ fishing for the remainder of the year, or was removed as an eligible vessel from a CDQ. The CDQ check-in/check-out report is described at § 679.5 (m) .

The CDQ Catch Report

The CDQ group would submit a weekly CDQ catch report for each vessel fishing CDQ. NMFS would maintain a record of the cumulative CDQ and PSQ catch based on the information submitted in the CDQ catch report. The CDQ catch report is described at § 679.5(n). NMFS would monitor the accuracy and completeness of the CDQ catch reports by using information from the CDQ check-in/check-out reports, vessel and processor reports, and observer data. NMFS would make an independent estimate of CDQ and PSQ

catch for each CDQ group using the catch accounting procedures agreed upon in the CDP.

Attaining or Exceeding a CDQ or PSQ

CDQ and PSQ allocations would be made to CDQ groups, not to individual vessels or processors. Each CDQ group would be responsible to prevent exceeding CDQs and halibut PSQ and to comply with time and area closures triggered by attainment of the salmon, herring, and crab PSQs. Therefore, the CDQ group would be primarily responsible for monitoring its harvesting and processing partners to account for all CDQ and PSQ, and to take the action necessary to prevent exceeding CDQs or halibut PSQs. Although NMFS would be monitoring CDQ fishing in-season and providing information to the CDQ groups, NMFS would not prescribe the specific action that must be taken to avoid exceeding a CDQ or PSQ.

In-season monitoring of CDQ catches would be based on the weekly CDQ catch report submitted by the CDQ representative. Also, NMFS would estimate the CDQ and PSQ catches from reports submitted by vessels and processors, such as the ADF&G fish tickets and processor's weekly production reports and by observers. The official estimates of CDQ and PSQ catch would be made once all observer data have been verified by NMFS and the CDQ catch reports have been reviewed.

CDQ Catch Accounting Requirements for Vessels and Processors

Proposed catch accounting requirements including equipment, observer coverage, and procedures that would be used to estimate

catch are discussed below by vessel and processor type. Additional information about the specific requirements for certified scales to weigh catch at sea, certified bins for volumetric estimates, the observer sampling station, and certified CDQ observers are discussed in later sections.

Unobserved Catcher Vessels

Catcher vessels in the groundfish and halibut CDQ fisheries that are less than 60 feet LOA would not be required to carry a CDQ observer. The majority of unobserved vessels participating in the current CDQ fisheries are catcher vessels that are 32 feet or less LOA harvesting halibut CDQ. In an analysis prepared for the April, 1996 Council meeting, NMFS estimated that, of the 127 catcher vessels harvesting halibut CDQ in 1995, 120 were 32 feet or less LOA, 1 was between 33 feet and 59 feet LOA, and 6 were between 60 feet and 124 feet LOA. In the 1995 sablefish CDQ fisheries, 1 catcher vessel was less than 60 feet LOA and 2 were between 60 feet and 120 feet LOA.

The catch accounting expectations of the multispecies CDQ fishery would require that the catch of all CDQ and PSQ species by unobserved vessels be counted against a CDQ or PSQ allocation. However, it is difficult to obtain accurate and reliable estimates of the catch of species discarded at sea by unobserved vessels.

NMFS proposes to require unobserved vessels to retain all CDQ species and deliver them to a processor where they would be sorted and weighed on a certified scale. Catcher vessels using

trawl gear would be required to retain all salmon and herring PSQ and deliver it to the processor. All catcher vessels would be required to carefully release halibut PSQ, record the estimated weight of the halibut PSQ, and report this on the ADF&G fish ticket and to the CDQ representative.

NMFS considered requiring the use of bycatch rate assumptions developed from observer data on vessels in the same target fishery and gear type as the unobserved vessels. However, NMFS decided not to recommend this approach because it would require estimation of bycatch rates with very little observer data, particularly for the halibut CDQ fisheries which make up the majority of the unobserved vessels at this time. NMFS also decided against recommending that the CDQ groups provide for some level of observer coverage on the unobserved vessels because of safety and cost concerns about deploying observers on such small vessels and out of remote communities.

Unobserved catcher vessels would not have additional equipment requirements that would necessitate a vessel inspection. Therefore, they would not require a CDQ permit. They would be eligible to participate in the CDQ fisheries as long as they were listed as an eligible vessel in an approved CDP.

Observed Catcher Vessels

All catcher vessels 60 feet and greater LOA would be required to have at least one certified lead CDQ observer for all groundfish and halibut CDQ fishing. A description of the CDQ

certified observer is contained in a later section.

Observed Catcher Vessels Using Trawl Gear

Operators of observed catcher vessels using trawl gear would be required to retain all groundfish CDQ and salmon and herring PSQ and deliver it to a processor where it would be sorted and weighed on a certified scale. All halibut and crab PSQ would be required to be discarded at sea after the observer had counted the halibut and crab PSQ and taken length frequency data from the halibut.

NMFS is proposing that all groundfish CDQ and salmon and herring PSQ be retained and weighed at a processing plant to eliminate the need for an observer to estimate the weight or numbers of at-sea discards. Without a means to weigh a large quantity of catch on the vessel, observers on board catcher vessels using trawl gear cannot make accurate estimates of at-sea discards.

NMFS's preferred estimates of catch would be based on the observer's estimate of halibut PSQ weight and crab PSQ numbers and on ADF&G fish tickets for the weight or numbers of CDQ and PSQ species.

Vessel owners would be required to provide space on the deck of the vessel for the observer to sort and store catch samples and a place from which to hang the observer sampling scale. Catcher vessels using trawl gear and retaining all groundfish CDQ and salmon and herring PSQ would not have additional equipment requirements that would necessitate a vessel inspection.

Therefore, they would not require a CDQ permit. They would be eligible to participate in the CDQ fisheries as long as they were listed as an eligible vessel in an approved CDP.

Observed Catcher Vessels Using Non-Trawl Gear

Observed catcher vessels using longline, pot, and jig gear (non-trawl gear) could select one of two options to account for groundfish and halibut CDQ. The first option would be to retain all groundfish and halibut CDQ as required for the observed catcher vessels using trawl gear and deliver it to a processor with a certified scale. Catcher vessels using this option would not be required to have a CDQ permit. The second option would allow for the discard of groundfish CDQ at sea under the same requirements that would govern processor vessels using non-trawl gear. In this case, the catcher vessel operator would have to provide sufficient observer coverage to sample all CDQ sets for species composition and average weight. In addition, the vessel would be required to provide an observer sampling station with a motion-compensated sampling scale so that observers could obtain accurate average weight data on each species in the catch. Catcher vessels using this option would be required to have a CDQ permit and a vessel inspection to check the sampling station and scale.

In both cases, careful release of halibut PSQ would be required and the observer would estimate the weight of halibut PSQ.

NMFS's preferred estimates of catch for vessels retaining

all groundfish CDQ would be based on the observer's estimate of halibut PSQ weight and the vessel operators and processors' reports of weight or numbers of CDQ and PSQ catch reported on ADF&G fish tickets.

NMFS's preferred estimates of catch for vessels discarding groundfish CDQ at sea would be based on the observer's estimate of the weight of both groundfish CDQ and halibut PSQ.

Catcher/Processors and Motherships

Regardless of their length, all catcher/processors and motherships would be required to have at least two certified CDQ observers, one of whom must meet the requirements of a lead CDQ observer (described in a later section).

All catcher/processors and motherships would be required to provide some kind of special equipment to improve estimates of CDQ and PSQ catch. NMFS proposes to require any vessel required to have a certified scale, certified bins, or an observer sampling station to undergo an inspection prior to being permitted to participate in the CDQ fisheries. Therefore, listing as an eligible vessel in an approved CDP will not be sufficient for catcher/processors and motherships to fish CDQ. The vessel inspection and the CDQ permit are described in a later section.

Catcher/Processors Using Trawl Gear and Motherships

Catcher/processors using trawl gear and motherships would be required to weigh all catch in the CDQ fisheries on a scale certified by NMFS and to provide an observer sampling station.

Regulations governing the certified scales and the observer sampling station are described in a later section.

NMFS's preferred estimates of catch for these vessels would be based on the observer's report of total catch weight from the certified scale and the observer's species composition sample data.

Catcher/Processors Using Non-Trawl Gear

Catcher/processors using longline, pot, or jig gear would be required to provide an observer sampling station, including a motion-compensated platform scale. CDQ observers would sample each set and determine species composition and average weight for all CDQ and PSQ species.

NMFS's preferred estimates of catch for these vessels would be based on the observer's report of species composition and average weight.

Shoreside Processors

Shoreside processors would be required to sort all CDQ deliveries by species or species group and weigh them on a scale certified by the State. PSQ species monitored by number would be required to be counted. The sorting and weighing of all CDQ and PSQ would be required to be monitored by a CDQ observer.

Shoreside processors would be required to be listed in the CDP and to have a valid CDQ permit to accept deliveries of CDQ catch. The permit would not be issued until NMFS had determined that the CDQ catch could be weighed on a certified scale and that an observer could monitor the sorting and weighing of all CDQ

species.

Observer Sampling to Determine CDQ and PSO Catch Weight

Methods proposed by NMFS that would be based on observer sampling to estimate species composition of the catch are based on sample sizes and procedures that NMFS believes an observer can reasonably accomplish in the time available to him or her under the fishing and processing conditions on a vessel. The observer will obtain the largest sample sizes they can, given time, equipment, available space, and catch composition. NMFS is not proposing to specify minimum sample sizes necessary to obtain catch weight estimates with specific statistical qualities. The staff resources and data necessary to develop sampling plans appropriate for specific target fisheries or specific vessels are not available at this time. In addition, NMFS expects that the minimum sample sizes required to estimate the weight of infrequently occurring species on a haul-by-haul basis with a high level of confidence would be too large to accommodate in the space available on many vessels and would require more than two observers to sort and weigh. If NMFS develops sampling plans or minimum sample sizes for the groundfish fisheries as a whole in the future, this information could be added to the CDQ fishery requirements at that time.

Separation of CDQ and Non-CDQ Catch

The need to account for all halibut, groundfish TAC species, and prohibited species under the groundfish and halibut CDQ program necessitates the separation of CDQ catch, IFQ catch, and

non-CDQ catch. NMFS must be able to distinguish between CDQ and non-CDQ fishing in order to know whether catch accrues to a CDQ/PSQ or to IFQs or non-CDQ TACs and PSC limits. Therefore, catcher vessels could land and deliver CDQ and IFQ species together, but they would be prohibited from catching and delivering CDQ and non-CDQ catch together. Catcher/processors would be prohibited from mixing CDQ and non-CDQ catch in the same haul or set. In addition, observed catcher vessels and catcher/processors could not harvest fish for more than one CDQ group or from CDQ and IFQ in the same haul or set. Observed catcher vessels could, however, harvest CDQ and IFQ fish in different sets on the same trip if they had sufficient quota to cover their catch of all species.

On catcher/processors allowed to retain both CDQ and non-CDQ catch during the same trip, no CDQ catch or processed product from CDQ catch could be used as a basis species to determine maximum retainable bycatch amounts in the non-CDQ fisheries.

Equipment Requirements for Vessels

A new § 679.28 entitled "Equipment and Operational Requirements for Catch Weight Measurement" proposed in a separate rulemaking would establish the requirements for certified scales to weigh catch at sea and certified scales in shoreside processing plants [INSERT DATE AND CITATION FOR AT-SEA SCALES PR]. The current proposed rule would add requirements for observer sampling stations to § 679.28 and would move requirements for certified holding bins from Subpart C to §

679.28. Although these equipment and operational requirements are proposed only as part of the CDQ monitoring program at this time, they may be applied more widely in the future.

Certified scales

All CDQ catch harvested by trawl catcher/processors or delivered to processor vessels or shoreside processing plants would be required to be weighed on a certified scale to obtain the most accurate estimate of the weight of each CDQ and PSQ species. Catch by observed vessels using non-trawl gear could be estimated by counting individual species and applying an average weight. Scales in shoreside processing plants would be required to be certified by the State of Alaska, as they currently are required to be under State law. Scales on catcher/processors using trawl gear and motherships would be certified under NMFS's at-sea scale certification program. More discussion on the background and requirements of the at-sea scale certification program may be found in the at-sea scale certification proposed rule [INSERT CITATION FOR SCALES PR].

All trawl catcher/processors and motherships would be required to install a scale and have the scale certified by a weights and measures inspector authorized by the Regional Administrator. All of the catch must be weighed on the certified scale before it is sorted. The weight of each species would be determined by observer's species composition sampling unless some other method is approved by NMFS in the CDP.

Purchase of a scale appropriate for trawl processor vessels

may cost between \$30,000 (hopper scales) and \$50,000 (belt-conveyor scales). Installation costs will vary depending on the type of scale selected, the modifications necessary to accommodate the scale, and changes in the sorting and discarding operations. In 1994, the Council recommended that NMFS require at-sea scales on processor vessels in the BSAI pollock fisheries. A draft EA/RIR/IRFA prepared for that recommendation analyzed an alternative to require certified scales on all trawl processor vessels. NMFS estimated that installation of an at-sea scale could cost from \$5,000 to \$250,000 per vessel. A copy of this EA/RIR/IRFA may be obtained from the Regional Administrator (see ADDRESSES). The installation of a scale also may reduce the efficiency of the fish processing factory, particularly if processing equipment has to be relocated. Although NMFS cannot estimate what these costs may be, processor vessels that would have to undergo significant modifications to their vessels or forego substantial processing efficiencies to accommodate a scale probably would choose not to participate in the CDQ fisheries rather than incur these costs.

Observer sampling station

All processor vessels would be required to have an observer sampling station which would include a motion compensated scale to improve the accuracy of sample weights, a table, a water hose, and a minimum amount of work space. Current observer sampling scales do not compensate for vessel motion and, therefore, are not providing as accurate sample weights as could be obtained

with a motion compensated scale. In addition, many processor vessels currently do not provide working and storage space necessary for observers to carry out their duties. The observer sampling station is estimated to cost between \$8,000 and \$14,000 per vessel, the majority of which is due to the motion compensated platform scale which could cost between \$8,000 and \$12,000 each.

Certified bins for volumetric estimates

Regulations governing the use of certified holding bins for volumetric estimates of total catch weight on catcher/processors and motherships are proposed to be moved from subpart C to the new § 679.28(e). Although processor vessels in the CDQ fisheries would be allowed to use certified bins for volumetric estimates of pollock CDQ catch only in 1998, requirements for certified bins must be maintained in regulation because NMFS allows processor vessels in the non-CDQ pollock fisheries with certified bins and two observers to use only observer estimates, rather than the NMFS blend system, to determine pollock catch weight.

NMFS implemented regulations on May 16, 1994 (59 FR 25346) requiring processor vessels participating in the pollock CDQ fisheries to have certified bins for volumetric estimates. A more complete description of how certified bins are used by observers to make volumetric estimates of total catch weight is included in the ANPR referenced above (59 FR 25346) and in the proposed rulemaking for the certified bins (58 FR 68386, December 27, 1993).

The current certified bins regulations include equipment and operational requirements. The operator is required to have each holding bin that would be used for volumetric estimates measured, marked, and certified by an independent marine engineer or other authorized individual. The operator also is required to provide "visual access" to the bins so that the observer can see the level of fish throughout the bin from outside the bin. In addition to the certification requirements, operators also must comply with operational requirements such as notifying the observer when fish would be added to or removed from the bin, or not filling the bin above the viewing port.

The following changes are proposed for the new paragraph at § 679.28(e) on certified bins:

(1) The paragraph would be reorganized to separate specifications and certification requirements from operational requirements.

(2) Certification documents would be submitted to the Regional Administrator (as would all equipment certification requirements in § 679.28) rather than to the NMFS Observer Program Office as required under current regulations.

(3) A new requirement that numerals identifying the level of fish in the bins be at least 4 cm high would be added for bin certification documents dated after the effective date of this proposed rule. Because the bin certification requirements would be effective only for 1998 in the CDQ fisheries, NMFS does not believe it would be necessary to require vessel owners to modify

numerals on previously certified bins. However, any bins certified for the first time or re-certified after the effective date of this proposed rule would be required to comply with this requirement.

(4) Clarification that marked increments would not be required on the wall in which the viewing port is located unless they are needed to determine the level of fish from another viewing port.

(5) A specific list of information that must be included in bin certification documents submitted after the effective date of this proposed rule would be added. In the current regulations, the bin certification documents must include a description of the location of bin markets, tables indicating bin volume in cubic meters for each marked increment and must be dated and signed by the person preparing the documents. This proposed rule would add requirements to also identify the vessel name, the date the bins were measured and the marked increments and numerals were witnessed, a diagram of the location of the marked increments, the location and dimensions of each viewing port, and instructions for determining the volume of fish in each bin from the diagrams and tables.

(6) A new requirement that refrigerated seawater tanks could be used for volumetric estimates only if all other requirements of the paragraph are met and no water would be added to the bins before the observer makes a volumetric estimate.

(7) The requirement for a viewing port or ports, through

which the level of fish inside the bin can be seen from outside the bin, would be more clearly stated.

(8) NMFS proposes that it is sufficient to require that a registered engineer perform bin certifications. Therefore, the provision allowing bins to be certified by "a qualified organization that has been designated by the USCG Commandant, or an authorized representative thereof, for the purpose of classing or examining commercial fishing industry vessels under the provisions of 46 CFR 28.76" is removed.

Equipment that Bias Observer Samples

Estimates of the catch of CDQ and PSQ are based either on processors reports of sorted and weighed or counted catch or on observer's species composition sample data applied to total catch weight. In either case, the use of equipment that would remove or destroy fish before they are counted, weighed, or sampled would result in an inaccurate estimate of CDQ or PSQ catch. In the shoreside plants, these fish would not be sorted and weighed or counted. On a vessel, removal of these fish would bias the observer's sample. NMFS regulations currently contain a prohibition at § 679.7(g)(2) against interfering with or biasing the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling. Although no additional specificity is being proposed at this time, NMFS believes that the following equipment biases observer samples if used to transport fish prior to the location where the observer samples: pumps that grind fish;

grates, small pipes, and hatches that prevent larger fish from flowing through; and incline belts operated at certain angles or speeds so that some fish do not get transported up the belt. NMFS may consider adding specific prohibitions against the use of such equipment in the future.

Permits for Vessels and Processors in the CDO Fisheries

The catch accounting requirements for the groundfish and halibut CDQ programs are different than those for the non-CDQ fisheries because they require the use of new equipment on vessels and observer monitoring of sorting and weighing of CDQ catch in shoreside plants.

All shoreside processors and all vessels required to have equipment such as a certified scale to weigh catch or an observer sampling station would be required to obtain a permit from NMFS to participate in the groundfish or halibut CDQ fisheries. Prior to issuing the CDQ permit, NMFS would inspect each vessel and processing plant to verify that the equipment required to account for CDQ catch was present and operational on the vessel and that specific requirements for observer sampling or sorting and weighing of catch could be met.

NMFS's experience with the certified bin requirement in the pollock CDQ fisheries is an important factor in the recommendation for pre-fishing inspections. Problems with the certified bins include improperly certified bins, inability of observers to see into the bins, unsafe access to the bins, and lack of understanding about how to use the bin certification documents. These problems have caused conflict between the vessel operator and the observer. Communication difficulties and the fact that many of the problems are only identified once fish have been harvested and the observer is unable to make a volumetric estimate of total catch weight have made it difficult

to resolve the problems quickly. Some of these problems could have been identified and resolved by a vessel inspection and improved communication between the CDQ participants and NMFS before CDQ fishing started. Other problems are operational in nature and cannot be identified until a vessel is fishing. The CDQ permit would be used only to identify compliance with specific equipment requirements prior to the start of the CDQ fisheries. NMFS would still have to rely on reports by observers or authorized officers to enforce operational violations.

Trawl catcher/processors and motherships would be inspected to verify that the observer sampling station met the requirements of §679.28(d), that the motion-compensated observer sampling scale was operating properly, and that observers could sample unsorted catch after it had been weighed on a certified scale.

Longline and pot catcher/processors and catcher vessels would be inspected to verify that the observer sampling station met the requirements of §679.28(d) and that the motion-compensated observer sampling scale was operating properly.

Shoreside processors would be inspected to verify that an observer could monitor the sorting and weighing of all CDQ and PSQ catch on a scale certified by the State of Alaska.

Vessel owners or processors would be required to submit a permit application to NMFS. Trawl catcher/processors and mothership owners and shoreside processors would be required to submit a diagram and description of the vessel or processing plant showing where CDQ catch would be sorted and weighed on a

certified scale and the location of the observer sampling station on vessels. Trawl catcher/processors and mothership owners also would be required to submit a copy of the at-sea scale inspection certificate. Longline or pot catcher/processors or catcher vessels would not be required to submit supplemental information with the permit application.

Upon receipt of the permit application, NMFS would schedule a vessel or plant inspection. NMFS would not issue the permit until the vessel or plant inspection had been conducted and NMFS verified compliance with specific equipment and catch accounting requirements.

Permits would have to be renewed each year. However, after the initial inspection of a vessel or plant is conducted, NMFS may waive requirements for inspections in future years if the observers report no problems with equipment or operational requirements and if the annual scale certification documents required for vessels are received by NMFS.

Once permitted, a vessel or processor could harvest or process CDQ fish for any CDQ group during the year for which it is permitted as long as it is listed as an eligible vessel or processor on the approved CDP for that CDQ group.

Certified CDQ Observer

The multi-species groundfish CDQ program would rely heavily on information collected by observers to determine the catch of CDQ and PSQ species, thereby increasing the need for accurate and timely observer data. Observers would need additional training

and briefing to provide more in-depth information about the additional monitoring, equipment, and operational requirements of the CDQ fisheries; how to collect and transmit CDQ data; and how to communicate questions or problems to NMFS. Therefore, NMFS proposes to create a new category of observer called a NMFS-certified CDQ observer, the requirements for which would be added at § 679.50 (h) (1) (i) (D).

Two levels of CDQ observer are proposed. The first level would be called a CDQ observer and the second level a "lead" CDQ observer. A person would be required to have experience observing in the CDQ fisheries in order to be certified as a lead CDQ observer. The CDQ observer level, with no requirements for CDQ observing experience, is necessary in order to provide the experience in the CDQ fisheries that is required to become a lead CDQ observer.

Both the CDQ observer and the lead CDQ observer would be required to have the following qualifications to be certified:

1. Receive the rating of 1 for "exceptional" or 2 for "meets expectations" by NMFS for their most recent deployment,
2. Be a prior observer who has completed at least 60 days of observer data collection on a vessel using the same gear type as the CDQ vessel that they will be deployed on. In other words, CDQ observers will be certified for specific gear types.
3. Successfully complete a NMFS-approved CDQ observer training and/or briefing. The additional training is expected to take approximately five days.

In addition to these requirements, a person certified as a "lead" CDQ observer would be required to have successfully completed at least 20 days of observer data collection on a vessel of any gear type participating in a CDQ fishery.

At least one of the observers on each catcher/processor, mothership, or catcher vessel and in the shoreplant would be required to be a certified "lead" CDQ observer. All CDQ observers on vessels would be required to have at least 60 days of experience collecting data on a vessel of the same gear type as the CDQ vessel they are deployed on.

Observer coverage requirements

Observer coverage requirements for vessels and processors participating in the groundfish and halibut CDQ fisheries would be moved from subpart C to subpart E with all other observer coverage requirements. Catcher vessels less than 60 ft LOA would not be required to carry an observer. All catcher vessels 60 ft LOA or longer, including those catcher vessels fishing halibut CDQ with groundfish CDQ bycatch, would be required to have at least one certified lead CDQ observer. Shoreside processing plants would be required to have at least one certified lead CDQ observer to monitor the sorting and weighing of all CDQ deliveries. Catcher/processors and motherships would be required to have two certified CDQ observers on board during the CDQ fisheries, at least one of which would be required to be a certified lead CDQ observer. Processors purchasing halibut CDQ and no other groundfish are not required by NMFS to have Federal

Processor permits and, therefore, are not required to be monitored by NMFS-certified observers. Observer coverage requirements include vessels fishing for halibut CDQ because of the need to monitor the catch of all CDQ and PSQ species in the catch.

This proposed rule also would amend § 679.50(a) to clarify that CDQ observer coverage days for "30 percent coverage" vessels would not count towards the required distribution of observer coverage throughout the year in the non-CDQ fisheries as described in § 679.50(c)(1)(v) and (c)(1)(vii).

Catch Accounting during the Transition Year

In 1998, processors in the pollock, sablefish, and halibut CDQ fisheries would continue to follow the catch accounting regulations currently used, although these regulations would be moved to § 679.32(f). Processor vessels in the pollock CDQ fishery would continue to use volumetrics to estimate pollock catch weight, however, pollock CDQ catches would be required to be reported to NMFS on the CDQ catch report.

Fixed gear vessel operators in the halibut and sablefish CDQ fisheries would be allowed to continue to use processed product weight and product recovery rates to estimate the round weight of retained catch and to report their catch to the RAM Division under the same regulations used for the halibut and sablefish IFQ program. The halibut and sablefish CDQ regulations would be moved to § 679.32(g). Halibut and fixed gear sablefish CDQ landings would not be reported on the CDQ catch report until

1999.

The Council recommended that no bycatch from the pollock, fixed gear sablefish, or fixed gear halibut CDQ fisheries accrue against the CDQ groups' CDQ or PSQs in the transition year. The only species that would accrue to a CDQ in the pollock CDQ fisheries would be pollock. Similarly, only sablefish and halibut catch in the fixed gear sablefish and halibut CDQ fisheries would accrue against a CDQ. Catch of all other species in these CDQ fisheries would accrue to the respective non-CDQ TACs and PSC limits.

Different requirements for the various CDQ fisheries in 1998 require definitions to distinguish among them. In 1998, the multispecies CDQ fisheries would not include pollock, fixed gear sablefish, or halibut. Different CDQ numbers would be assigned to each CDQ group's allocations of pollock, sablefish, halibut, and multispecies groundfish. Under current regulations, each vessel and processor is required to maintain separate catch and production records for fish harvested under each CDQ number. In addition, the CDQ representative would be required to identify vessels fishing in the pollock CDQ fisheries on the check-in and check-out reports. Check-in check-out reports are not proposed to be required for the fixed gear halibut and sablefish CDQ fisheries in 1998 because they would still be operating under the IFQ regulations.

The allowable amount of groundfish bycatch that could be retained in the pollock, fixed gear sablefish, and fixed gear

halibut CDQ fisheries would have to comply with maximum retainable bycatch amounts and fishery closures for the non-CDQ TACs against which this bycatch is accruing.

Equipment and operational requirements proposed for the multispecies CDQ program would not apply to the pollock, and fixed gear sablefish and halibut CDQ fisheries in 1998. However, starting on January 1, 1999, the equipment and operational requirements discussed in previous sections would apply to all vessels and processors in the multi-species groundfish and halibut CDQ fisheries.

Classification

Section 304(a) (3) of the Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to approve, disapprove, or partially approve an FMP or FMP amendment submitted by the Council within 30 days of the end of the comment period for that FMP or FMP amendment. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

An EA/RIR was prepared for this rule that describes the management background, the purpose and need for action, the management action alternatives, and the socio-economic impacts of the alternatives. The EA/RIR estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities. Based on the economic analysis

in the EA/RIR, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities; as follows:

Although most fishing operations affected by these regulations (1896 fishing operations--based on the total number of moratorium qualifications issued to date) are considered small entities, a substantial number of these small entities would not have impacts of the type contemplated by the RFA as "significant." In fact, it is estimated that 2962 fishing operations would qualify under the LLP, 1066 more fishing operations than are currently licensed to operate. This number of fishing operations also exceeds the average number of fishing operations from 1988 - 1995 (1956 fishing operations) and the fishing operations in the year of the highest participation (1992--2285 fishing operations). Some vessels that are currently participating under the moratorium on entry might not qualify under the LLP because of insufficient participation during the endorsement qualification period (1992 - 1995). However, given the relatively easy qualification requirements (i.e., one landing in each of any 2 calendar years 1/1/92 - 6/17/95 at most, in some cases only a single landing during that period), this number is anticipated to be below the 20 percent threshold. Furthermore, most vessels that would not qualify for a license under the LLP would be small vessels that are either exempt from the LLP because of their size (i.e., equal to or less than 32 ft in the Bering Sea and Aleutian Islands Area or equal to or less than 26 ft in the Gulf of Alaska), or vessels that primarily participated in state waters and only had minimal participation in the EEZ off Alaska (i.e., landings that amounted to less than 5 percent of their gross catch). In the case of the former, there would be no impact, significant or otherwise, because these vessels would be able to continue their participation through the exemption provided in the LLP. In the case of the latter, the impact would not rise to significance under the RFA because the vessels primarily participated in state waters, which would be unaffected by the LLP.

While the CDQ allocations certainly provide significant benefits to the recipient groups and communities, and at the same time impose additional reporting and administrative requirements, the six CDQ organizations likely would not be classified as "small entities" under the auspices of the RFA, nor would they, in total, comprise a "substantial" number of entities (large or small) operating in the fisheries off Alaska.

The associated 7.5% reduction in overall quota available to the

remaining fishing fleet (which includes a substantial number of small entities) is not expected to result in a direct 7.5% reduction in catch, for example, by any individual small fishing operation. As noted previously, the 7.5% allocation is far less than the percentage of fish currently discarded in the collective groundfish fisheries. Council programs which mandate retention and utilization of groundfish species beginning in 1998 are estimated to more than make up for the 7.5% quota reduction, in terms of overall fish available for both small and large fishing operations. It is also true that the gross income for individual, small fishing operations is less dependent on overall quotas available than it is on other factors such as, relative fish prices across species, unpredictable weather patterns, timing and magnitude of alternative fishing opportunities such as salmon, and other business decisions made independent of the overall TAC levels for groundfish.

Copies of the EA/RIR can be obtained from NMFS (see ADDRESSES).

This proposed rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection of information has been submitted to OMB for approval. The new information requirements consists of: Preparation of 5000 initial applications over the life of the LLP requiring an estimated time of 2 hours each to complete for a total of 10,000 hours; preparation of 500 transfer applications per year requiring an estimated time of 1 hour each to complete for a total of 500 hours per year; preparation of 1250 vessel operator information submissions requiring an estimated time of 0.25 hours each to complete for a total of 312.5 hours per year; preparation of six proposed CDPs requiring an estimated time of 500 hours to complete for a total of 1,000 hours per year; preparation of six annual reports requiring an estimated time of 40 hours to complete for a total of 240 hours per year; preparation of six annual budget reports requiring an estimated time of 20 hours to complete for a total of 120 hours per year; preparation of six annual budget reconciliation reports requiring an estimated time of 8 hours to complete for a total of 48 hours per year; preparation of 48 substantial amendments requiring an estimated time of 8 hours to complete for a total of 384 hours per year; preparation of 60 technical amendments requiring an estimated time of 4 hours to complete for a total of 240 hours per year; preparation of 56 CDQ permit applications requiring an estimated time of 2 hours to complete for a total of 112 hours; preparation of 1,560 CDQ check-in/check-out reports requiring an estimated

time of 10 minutes to complete for a total of 130 hours; and preparation of 144 CDQ catch reports requiring an estimated time of 1 hour to complete for a total of 144 hours per year.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing burdens, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 679:

Fisheries, Reporting and recordkeeping requirements.

Dated:

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq.

2. The table of contents is amended to revise the title of § 679.32, and to remove §§ 679.33 and 679.34 as follows:

Subpart A--General

Sec.

679.1 Purpose and scope.

679.2 Definitions.

679.3 Relation to other laws.

679.4 Permits.

679.5 Recordkeeping and reporting.

679.6 Experimental fisheries.

679.7 Prohibitions.

679.8 Facilitation of enforcement.

679.9 Penalties.

Subpart B--Management Measures

679.20 General limitations.

679.21 Prohibited species bycatch management.

679.22 Closures.

679.23 Seasons.

679.24 Gear limitations.

679.25 Inseason adjustments.

679.26 Salmon Donation Program.

679.27 Improved Retention/Improved Utilization.

679.28 Equipment and operational requirements for catch weight measurement.

Subpart C--Western Alaska Community Development Quota Program

679.30 General CDQ regulations.

679.31 CDQ reserves.

679.32 Groundfish and halibut CDQ catch monitoring.

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3. In § 679.1, paragraph (e) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(e) Western Alaska CDQ Program. The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries-related economy.

* * * * *

(i) License Limitation Program. (1) Regulations in this part implement the license limitation program for the commercial groundfish fisheries in the EEZ off Alaska and for the commercial crab fisheries for the Bering Sea and Aleutian Islands in the EEZ off Alaska.

(2) Regulations in this part govern the commercial fishing for license limitation groundfish by vessels of the United States

using authorized gear 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 and for the commercial fishing for crab species by vessels of the United States using authorized gear within that portion of the Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority.

4. In § 679.2, the definition for Governor is removed; the definitions for Community Development Plan, Community Development Quota (CDQ), CDQ Program, CDQ Reserve, Directed Fishing, Legal Landing, Maximum LOA, Person, Processing or to process, Qualified Applicant, Qualified Person, and Resident Fisherman are revised; and the definitions for Area Endorsement, Area/Species Endorsement, Catcher/Processor Vessel Designation, Catcher Vessel Designation, CDQ Allocation, CDQ Fishing, CDQ Group, CDQ Number, CDQ Project, CDQ Representative, CDQ Species, CDQ Target Fishery, Crab Species, Crab Species License, Eligible Applicant, Groundfish License, License Holder, License Limitation Groundfish, Managing Organization, Prohibited Species Quota, PSQ Allocation, PSQ Species, State, and Vessel Length Category are added in appropriate alphabetical order to read as follows:

§ 679.2 Definitions.

Area endorsement means the designation(s) on a license that authorizes a license holder to conduct directed fishing for license limitation groundfish in the designated area(s),

subarea(s), or district(s). Area endorsements, which are inclusive of, but not necessarily the same as, management areas, subareas, or districts defined in this part, are as follows:

(1) Aleutian Islands area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Aleutian Islands Subarea;

(2) Bering Sea area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Bering Sea Subarea;

(3) Central Gulf area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Central Area of the Gulf of Alaska and the West Yakutat District;

(4) Southeast Outside area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Southeast Outside District; and

(5) Western Gulf area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Western Area of the Gulf of Alaska.

Area/species endorsement means the designation(s) on a license that authorizes a license holder to conduct directed fishing for the designated crab species in Federal waters in the designated area(s) below. Area/species endorsements for crab species licenses are as follows:

(1) Adak brown king in waters with an eastern boundary of 171° W. long., a western boundary of the U.S.-Russian Convention

Line of 1867, and a northern boundary of 55° 30' N. lat.;

(2) Adak red king in waters with an eastern boundary of 171° W. long., a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of 55° 30' N. lat.;

(3) Bristol Bay red king in waters with a northern boundary of 58° 39' N. lat., a southern boundary of 54° 36' N. lat., and a western boundary of 168° W. long. and includes all waters of Bristol Bay;

(4) BS/AI C. opilio and C. bairdi in Pacific Ocean waters with a northern boundary of 58° 52' N. lat., and an eastern boundary of 148° 50' W. long, and all Bering Sea and Pacific Ocean waters east of the U.S.-Russian Convention Line of 1867, excluding

(i) Pacific Ocean waters with a northern boundary of 58° 52' N. lat., an eastern boundary of 148° 50' W. long., and a western boundary of 157° 27' W. long.,

(ii) Pacific Ocean waters with an eastern boundary line from the southernmost tip of Kupreanof Point to the easternmost tip of Castle Rock and extending southeast (135°) from that easternmost point, and a western boundary line extending south (180°) from Scotch Cap Light, and

(iii) Pacific Ocean waters with a western boundary line from the southernmost tip of Kupreanof Point to the easternmost tip of Castle Rock and extending southeast (135°) from that easternmost point, and an eastern boundary line of the longitude of the easternmost tip of Cape Kumlik;

(5) Dutch Harbor brown king in waters with a northern boundary of 54° 36' N. lat., an eastern boundary of the longitude of Scotch Cap Light, and a western boundary of 171° W. long., excluding the waters with a southern boundary line from 54° 36' N. lat., 168° W. long., to 54° 36' N. lat., 171° W. long., to 55° 30' N. lat., 171° W. long., to 55° 30' N. lat., 173° 30' E. lat., a northern boundary of 68° 21' N. lat., an eastern boundary line from 54° 36' N. lat., 168° W. long., to 58° 39' N. lat., 168° W. long., to 59° 39' N. lat., and a western boundary of the U.S.-Russian Convention line of 1867;

(6) Norton Sound red king and Norton Sound blue king in waters with a western boundary of 168° W. long., a southern boundary of 61° 49' N. lat., and a northern boundary of 65° 36' N. lat.;

(7) Pribilof red king and Pribilof blue king in waters with a northern boundary of 58° 39' N. lat., an eastern boundary of 168° W. long., a southern boundary line from 54° 36' N. lat., 168° W. long., to 54° 36' N. lat., 171° W. long., to 55° 30' N. lat., 171° W. long., to 55° 30' N. lat., 173° 30' E. lat., and a western boundary of the U.S.-Russian Convention line of 1867; and

(8) St. Matthew blue king in waters with a northern boundary of 61° 49' N. lat., a southern boundary of 58° 39' N. lat., and a western boundary of the U.S.-Russian Convention line of 1867.

Catcher/processor vessel designation means a license designation that authorizes a license holder:

(1) To conduct directed fishing for license limitation

groundfish and/or process license limitation groundfish on a vessel; or

(2) To conduct directed fishing for crab species and/or process crab species on a vessel.

Catcher vessel designation means a license designation that authorizes a license holder:

(1) To conduct directed fishing for, but not process, license limitation groundfish on a vessel; or

(2) To conduct directed fishing for, but not process, crab species on a vessel.

Community Development Plan (CDP) means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

Community Development Quota (CDQ) means the annual amount of a particular CDQ species, in metric tons or numbers, that a CDQ group is permitted to catch based on a CDQ allocation that has been requested in a proposed CDP and approved by NMFS.

CDQ allocation means a percentage of a CDQ reserve, defined at § 679.31, which is assigned to a CDQ group when NMFS approves a proposed CDP.

CDQ fishing means fishing for any CDQ or PSQ species.

CDQ group means a qualified applicant with an effective CDP.

CDQ number means a number assigned to the CDQ group by NMFS that is to be used on all reports submitted by the CDQ group.

CDQ project means a program or an investment that is funded

by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group.

CDQ representative means an individual who is the official contact for 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(h) (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(h) (4) and (5) has been transferred by the express terms of a written contract that clearly and unambiguously provides that the qualification for a license under the LLP has 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(h) (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(h) (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(h) (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; and

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Public Law 92-203) to be a native village; and

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

(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 any amount of fish that was landed 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 any organization that would assume responsibility for managing all or part of a CDP.

Maximum LOA (MLOA) means:

(1) (Applicable through December 31, 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 feet (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 feet (18.3 m);

(ii) 124 feet (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 feet (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 feet (38.1 m) or greater.

(3) For purposes of determining LOA for paragraph (2) of this definition, evidence must be provided showing

(i) The vessel's length on June 24, 1992, or the vessel's length on the date reconstruction was completed if the vessel was being reconstructed on June 24, 1992;

(ii) The vessel's length on June 17, 1995; and

(iii) The date the vessel was lengthened and the vessel's length before and after that date, if the vessel was lengthened after June 24, 1992.

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), whether or not 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 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 permitted 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.

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

§ 679.4 Permits.

(a) * * * * *

(6) Harvesting privilege. Quota shares, permits, or licenses issued pursuant to this part do not represent either an absolute right to the resource or 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) Year for which CDQ permit is requested.

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

(iii) Vessel or processor name.

(iv) Federal fishery or processor permit number.

(v) Name, street address, mailing address, telephone number, and fax number of person submitting application.

(vi) Supplementary information must be submitted with the CDQ permit applications for the following vessels or processors.

(A) Trawl catcher/processors and motherships.

(1) 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) 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. 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. Name of manufacturer and model of the motion compensated observer sampling scale.

(vii) Name and signature of person submitting application and date the application is signed.

(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 will be 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 to comply with all equipment and operational requirements in § 679.28 and § 679.32.

* * * * *

(h) 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 (h)(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 (h) (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 and 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.

(2) Exempt vessels. Notwithstanding the requirements of paragraph (h) (1) of this section, a vessel within one of the

following categories may, in compliance with other applicable regulations, conduct directed fishing for license limitation groundfish or conduct directed fishing for crab species without a groundfish license or crab species license:

(i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft (7.9 m) LOA may conduct directed fishing for license limitation groundfish in the Gulf of Alaska;

(ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands management area and also may conduct directed fishing for license limitation groundfish in the Bering Sea and Aleutian Islands management area;

(iii) A catcher vessel or catcher/processor vessel that does not exceed 60 ft (18.3 m) LOA may use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line, to conduct directed fishing for license limitation groundfish in the Bering Sea and Aleutian Islands management area; or

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a Community Development Plan approved by the Secretary of Commerce under Subpart C of this part, and is designed and equipped to meet specific needs that are described in the Community Development Plan.

(3) Vessel designations and vessel length categories. (i)

Vessel designations--(A) Catcher vessel. A license will be assigned the vessel designation of catcher vessel if:

(1) For license limitation groundfish, no license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (h)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (h)(4)(ii) of this section; or

(2) For crab species, no crab species were processed on the vessel that qualified for the crab species license under paragraph (h)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area/species endorsement qualifying period specified in paragraph (h)(5)(ii) of this section.

(B) Catcher/processor vessel. A license will be assigned the vessel designation of catcher/processor vessel if:

(1) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (h)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (h)(4)(ii) of this section; or

(2) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (h) (5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (h) (5) (ii) of this section.

(C) Changing a vessel designation. A person who holds a groundfish license or a crab species license with a catcher/processor vessel designation may, upon request to the Regional Administrator, have the license reissued with a catcher vessel designation. The vessel designation change to a catcher vessel will be permanent and that license would be valid for only those activities specified in the definition of catcher vessel designation at section 679.2 of this part.

(ii) Vessel length categories. A license will be assigned one of the vessel length categories in paragraphs (h) (3) (ii) (A) through (h) (3) (ii) (C) of this section based on the LOA of the vessel on June 17, 1995.

(A) Vessel length category "A" if the LOA of the qualifying vessel on June 17, 1995 was equal to or greater than 125 ft (38.1 m) LOA;

(B) Vessel length category "B" if the LOA of the qualifying vessel on June 17, 1995 was equal to or greater than 60 ft (18.3 m), but less than 125 ft (38.1 m) LOA; and

(C) Vessel length category "C" if the LOA of the qualifying vessel on June 17, 1995 was less than 60 ft (18.3 m) LOA.

(iii) A license can be used only on a vessel that complies with the vessel designation and that has an LOA less than or equal to the MLOA specified on the license.

(4) Qualifications for a groundfish license. A groundfish license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (h)(4)(i) and (h)(4)(ii) of this section.

(i) General qualification periods (GOP). (A) To qualify for one or more of the area endorsements in paragraphs (h)(4)(ii)(A) and (h)(4)(ii)(B) of this section, a vessel must have made at least one legal landing of any license limitation groundfish species harvested in the Bering Sea and Aleutian Islands management area or in State waters shoreward of that management area during:

(1) The period January 1, 1988, through June 27, 1992;

(2) The period January 1, 1988, through December 31, 1994, provided that the legal landing was of license limitation groundfish harvested using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) The period January 1, 1988, through June 17, 1995, provided that the vessel qualified for a crab fisheries endorsement under the Moratorium on Entry.

(B) To qualify for one or more of the area endorsements in paragraphs (h)(4)(ii)(C) through (h)(4)(ii)(E) of this section, a vessel must have made at least one legal landing of any license limitation groundfish species harvested in the Gulf of Alaska or

in State waters shoreward of the Gulf of Alaska during:

(1) The period January 1, 1988, through June 27, 1992;

(2) The period January 1, 1988, through December 31, 1994, provided that the legal landing was of license limitation groundfish harvested using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) The period January 1, 1988, through June 17, 1995, provided that the vessel qualified for a crab fisheries endorsement under the Moratorium on Entry.

(ii) Endorsement qualification periods (EOP). A groundfish license will be assigned one or more area endorsements based on the criteria in paragraphs (h) (4) (ii) (A) through (h) (4) (ii) (E) in this part.

(A) Aleutian Islands area endorsement. A vessel of any length (vessel categories "A" through "C") must have made at least one legal landing of license limitation groundfish harvested during the period January 1, 1992, through June 17, 1995, in the Aleutian Islands Subarea or in State waters shoreward of that subarea for an Aleutian Islands area endorsement.

(B) Bering Sea area endorsement. A vessel of any length (vessel categories "A" through "C") must have made at least one legal landing of license limitation groundfish harvested during the period January 1, 1992, through June 17, 1995, in the Bering Sea Subarea or in State waters shoreward of that subarea for a Bering Sea area endorsement.

(C) Central Gulf area endorsement:

(1) A vessel assigned to vessel category "A" must have made at least one legal landing of license limitation groundfish harvested in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district, for a Central Gulf area endorsement;

(2) A vessel assigned to vessel category "B" must have made at least one legal landing of license limitation groundfish harvested in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, or at least four legal landings of license limitation groundfish harvested during the period January 1, 1995, through June 17, 1995, in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in State waters shoreward of that district, for a Central Gulf area endorsement; and

(3) A vessel assigned to vessel category "C" must have made at least one legal landing of license limitation groundfish harvested during the period January 1, 1992, through June 17, 1995, in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district, for a Central Gulf area endorsement.

(D) Southeast Outside area endorsement:

(1) A vessel assigned to vessel category "A" must have made at least one legal landing of license limitation groundfish harvested in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district for a Southeast Outside area endorsement;

(2) A vessel assigned to vessel category "B" must have made at least one legal landing of license limitation groundfish harvested in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district, or at least four legal landings of license limitation groundfish harvested during the period January 1, 1995, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district for a Southeast Outside area endorsement; and

(3) A vessel assigned to vessel category "C" must have made at least one legal landing of license limitation groundfish harvested during the period January 1, 1992, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district for a Southeast Outside area endorsement.

(E) Western Gulf area endorsement:

(1) A vessel assigned to vessel category "A" must have made at least one legal landing of license limitation groundfish harvested in each of any 2 calendar years during the period

January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement;

(2) A vessel assigned to vessel category "B" and the vessel designation of catcher vessel must have made at least one legal landing of license limitation groundfish harvested during the period January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement;

(3) A vessel assigned to vessel category "B" and the vessel designation of catcher/processor vessel must have made at least one legal landing of license limitation groundfish harvested in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area, or at least four legal landings of license limitation groundfish harvested during the period January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement; and

(4) A vessel assigned to vessel category "C" must have made at least one legal landing of license limitation groundfish harvested during the period January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(iii) An eligible applicant that is issued a groundfish

license based on a vessel's qualifications under paragraph (h) (4) (i) (A) (2) or (h) (4) (i) (B) (2) of this section must choose a single area endorsement for that groundfish license even if the vessel would have qualified for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (h) (4) of this section, an eligible applicant whose vessel made a legal landing of license limitation groundfish harvested in the Bering Sea and Aleutian Islands management area or in State waters shoreward of that management area during the GQP defined in paragraph (h) (4) (i) (A) of this section, and made legal landings of license limitation groundfish harvested in one of the areas of the Gulf of Alaska or in State waters shoreward of one of the areas of the Gulf of Alaska during the EQP defined in paragraphs (h) (4) (ii) (C), (D), and (E), but did not make legal landings of license limitation groundfish harvested in the Gulf of Alaska or in State waters shoreward of the Gulf of Alaska during the GQP defined in paragraph (h) (4) (i) (B) of this section, and did not make landings of license limitation groundfish harvested in one of the areas of the Bering Sea and Aleutian Islands management area or in State waters shoreward of one of the areas of that management area during the EQP defined in paragraph (h) (4) (ii) (A) and (B), will be issued a license with area endorsements based on the legal landings of license limitation groundfish harvested during the EQP and meeting the requirements in paragraphs (h) (4) (ii) (C), (D), and (E).

(v) Notwithstanding the provisions in paragraph (h) (4) of

this section, an eligible applicant whose vessel made a legal landing of license limitation groundfish harvested in the Gulf of Alaska or in State waters shoreward of the Gulf of Alaska during the GQP defined in paragraph (h) (4) (i) (B) of this section, and made legal landings of license limitation groundfish harvested in one of the areas of the Bering Sea and Aleutian Islands management area or in State waters shoreward of one of the areas of that management area during the EQP defined in paragraphs (h) (4) (ii) (A) and (B), but did not make legal landings of license limitation groundfish harvested in the Bering Sea and Aleutian Islands management area or in State waters shoreward of the that management area during the GQP defined in paragraph (h) (4) (i) (A) of this section, and did not make landings of license limitation groundfish harvested in one of the areas of the Gulf of Alaska or in State waters shoreward of one of the areas of the Gulf of Alaska during the EQP defined in paragraph (h) (4) (ii) (C), (D), and (E), will be issued a license with area endorsements based on the legal landings of license limitation groundfish harvested during the EQP and meeting the requirements in paragraphs (h) (4) (ii) (A) and (B).

(5) Qualifications for a crab species license. A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (h) (5) (i) and (ii) of this section, except that vessels are exempt from the requirements in paragraph (h) (5) (i) of this section for the area/species endorsements in paragraph (h) (5) (ii) (A) and (H) of

this section.

(i) General qualification period (GOP). To qualify for one or more of the area/species endorsements in paragraph (h) (5) (ii) of this section, a vessel must have:

(A) Made at least one legal landing of crab species harvested during the period January 1, 1988, through June 27, 1992; or

(B) Made at least one legal landing of crab species harvested during the period January 1, 1988, through December 31, 1994, providing that the vessel qualified for a groundfish fisheries endorsement under the Moratorium on Entry.

(ii) A crab species license will be assigned one or more area/species endorsements based on the criteria in paragraphs (h) (5) (ii) (A) through (H) of this section.

(A) Pribilof red king and Pribilof blue king. A vessel must have made at least one legal landing of red king or blue king crab harvested in the area described in the definition for the Pribilof red king and Pribilof blue king area/species endorsement in § 679.2 of this part during the period January 1, 1993, through December 31, 1994, to qualify for a Pribilof red king and Pribilof blue king area/species endorsement.

(B) BS/AI C. opilio and C. bairdi. A vessel must have made at least three legal landings of C. opilio or C. bairdi crab harvested in the area described in the definition for the BS/AI C. opilio or C. bairdi area/species endorsement in § 679.2 of this part during the period January 1, 1992, through December 31,

1994, to qualify for a C. opilio and C. bairdi area/species endorsement.

(C) St. Matthew blue king. A vessel must have made at least one legal landing of blue king crab harvested in the area described in the definition for the St. Matthews blue king area/species endorsement in § 679.2 of this part during the period January 1, 1992, through December 31, 1994, to qualify for a St. Matthew blue king area/species endorsement.

(D) Adak brown king. A vessel must have made at least three legal landings of brown king crab harvested in the area described in the definition for the Adak brown king area/species endorsement in § 679.2 of this part during the period January 1, 1992, through December 31, 1994, to qualify for a Adak brown king area/species endorsement.

(E) Adak red king. A vessel must have made at least one legal landing of red king crab harvested in the area described in the definition for the Adak red king area/species endorsement in § 679.2 of this part during the period January 1, 1992, through December 31, 1994, to qualify for a Adak red king area/species endorsement.

(F) Bristol Bay red king. A vessel must have made at least one legal landing of red king crab harvested in the area described in the definition for the Bristol Bay red king area/species endorsement in § 679.2 of this part during the period January 1, 1991, through December 31, 1994, to qualify for a Bristol Bay red king area/species endorsement.

(G) Dutch Harbor brown king. A vessel must have made at least three legal landings of brown king crab harvested in the area described in the definition for the Dutch Harbor brown king area/species endorsement in § 679.2 of this part during the period January 1, 1992, through December 31, 1994, to qualify for a Dutch Harbor brown king area/species endorsement.

(H) Norton Sound red king and Norton Sound blue king. A vessel must have made at least one legal landing of red king or blue king crab harvested in the area described in the definition for the Norton Sound red king and Norton Sound blue king area/species endorsement in § 679.2 of this part during the period January 1, 1993, through December 31, 1994, to qualify for a Norton Sound red king and Norton Sound blue king area/species endorsement.

(6) Application for a groundfish license or a crab species license. (i) An eligible applicant must meet all the criteria for eligibility in paragraph (h) of this section and submit a complete application to the Administrator, Alaska Region, NMFS, to receive a groundfish license or a crab species license.

(ii) A successor-in-interest can apply in the place of an eligible applicant if the eligible applicant is unable to apply for a license because:

(A) Of death or disability at the time of application, if the eligible applicant is an individual; or

(B) The entity is no longer in existence at the time of application, if the eligible applicant is not an individual.

(iii) An application for a groundfish license or a crab species license may be requested from and submitted to the Restricted Access Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668. An application may be requested also by telephone by calling 907-586-7202 or 800-304-4846 or by facsimile by calling 907-586-7354. A complete application for a groundfish license or a crab species license must include the following information:

(A) Name of the vessel, state registration number of the vessels and, the U.S. Coast Guard documentation number of the vessel, if any;

(B) Name, business address, and telephone and fax number of the owner of the vessel as of June 17, 1995, including all owners if more than one;

(C) Name of the managing company;

(D) Valid documentation of the legal landings that qualify the vessel for a groundfish license or a crab species license if requested by the Regional Administrator due to an absence of landing records for the vessel during the qualifying periods;

(E) Valid documentation of the vessel's LOA on June 17, 1995;

(F) Valid documentation to support the vessel's designation of catcher vessel or catcher/processor vessel based on the criteria in § 679.4(h)(3)(i); and

(G) Signature of the eligible applicant, or the person who represents the eligible applicant.

(7) Transfers--(i) General requirements. A person must be able to document a fishing vessel under Chapter 121, Title 46, U.S.C., to receive a groundfish license or a crab species license through transfer.

(ii) Transfer procedures. (A) A transferred license must not be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species until a transfer application has been reviewed and approved by the Regional Administrator and the license is reissued in the name of the recipient of the transferred license.

(B) Transfer applications can be requested from and submitted to the address in paragraph (h)(6)(ii) of this section.

(C) Transfer applications must contain the following information to be reviewed by the Regional Administrator:

(1) Name of the person(s) who is transferring the license, including all persons if more than one person holds the license;

(2) Name of the person(s) who is the recipient of the transferred license, including all persons if more than one person is the recipient of the license; and

(3) Valid documentation that the recipient of the transferred license meets the criteria in paragraph (h)(7)(i) of this section.

(D) A transfer application will not be approved by the Regional Administrator if:

(1) The recipient of the transferred license does not meet the criteria in paragraph (h)(7) of this section;

(2) There are fines, civil penalties, other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations involving any persons that are party to the transfer;

(3) The transfer would cause the recipient of the transferred license to exceed the license caps in § 679.7(h) of this part; or

(4) The transfer application is incomplete.

(iii) Severability of licenses. (A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together.

(B) A groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person are not severable and must be transferred together.

(8) Other provisions.

(i) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Fishery Conservation and Management Act or any regulations issued pursuant thereto, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson-Stevens Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(ii) Notwithstanding the provisions of the license

limitation program in this part, vessels fishing for species other than license limitation groundfish as defined in § 679.2 of this part that were authorized under Federal regulations to incidentally catch license limitation groundfish without a Federal fisheries permit described at § 679.4(b) of this part will continue to be authorized to catch the maximum retainable bycatch amounts of license limitation groundfish as provided in this part without a groundfish license.

(iii) An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel has been subsequently lost or destroyed, will be issued the license for which the lost or destroyed vessel qualified. This license:

(A) Will have the vessel designation and vessel length category of the lost or destroyed vessel; and

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA greater than the MLOA designated on the license.

(iv) A qualified person who owned a vessel on June 17, 1995, that made a legal landing of license limitation groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992, but whose vessel was unable to meet all the criteria in paragraph (h) (4) in this section for a groundfish license or paragraph (h) (5) of this section for a crab species license because of an unavoidable circumstance, i.e., the vessel was lost, damaged, or otherwise unable to participate in the license

limitation groundfish or crab fisheries, may receive a license if the qualified person is able to demonstrate:

(A) That the owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area;

(B) That the specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

(1) Unavoidable;

(2) Unique to the owner of that vessel, or unique to that vessel; and

(3) Unforeseen and reasonably unforeseeable to the owner of the vessel;

(C) That the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred;

(D) That, under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species; and

(E) That license limitation groundfish or appropriate crab species were harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17,

1995 is applying and the harvested license limitation groundfish or crab species was legally landed after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

(v) A groundfish license or a crab species license may be used on a vessel that complies with the vessel designation on the license and that does not exceed the MLOA on the license.

(9) Operator reporting system. (i) Groundfish license holders shall provide to NMFS the names, addresses, and service records of all operators of a vessel that is authorized to engage in directed fishing for license limitation groundfish based on a groundfish license issued to the holder.

(ii) Crab species license holders shall provide to NMFS the names, addresses, and service records of all operators of a vessel that is authorized to engage in directed fishing for crab species based on a crab species license issued to the holder.

(iii) For purposes of paragraph (h) (9) of this section, a service record is information regarding the tenure of an operator aboard a vessel, and must include dates, areas fished, and pounds landed during that tenure.

(iv) The information requested in (h) (9) (i) and (ii) of this section shall be provided to NMFS no later than December 31 of the calendar year in which the operator(s) performed services on the vessel.

6. In § 679.5 new paragraphs (m) and (n) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(m) CDQ check-in/check-out report. The CDQ representative must submit a check-in/check-out report for each vessel harvesting groundfish and halibut CDQ under Subpart C of this part.

(1) Check-in. The CDQ representative must submit a check-in message by fax to NMFS before the operator of a catcher vessel or catcher/processor begins harvesting groundfish or halibut CDQ. The check-in message must be submitted before the first trip of the year and if CDQ fishing begins again after a check-out message has been sent for the vessel.

(2) Check-out. The CDQ representative must submit a check-out message by fax to NMFS after the delivery of CDQ catch by a catcher vessel unless that vessel will be CDQ fishing on its next trip and after the retrieval of a CDQ haul or set by a catcher/processor unless that vessel will be CDQ fishing on its next haul or set. The check-out message must be received by NMFS before the vessel deploys gear in a non-CDQ fishery.

(3) Information required. The CDQ representative must record the following information for each CDQ check-in/check-out report.

(i) The CDQ number.

(ii) Vessel name.

(iii) Federal fisheries or processor number or ADF&G number if the vessel is not required to have a federal fisheries permit.

(iv) Check-in message.

(A) Catcher vessel. The date the CDQ trip will start.

(B) Catcher/processor. The date CDQ fishing will start and the first haul or set number for the CDQ catch.

(v) Check-out message.

(A) Catcher vessel. Date CDQ catch delivered and name of processor that received delivery.

(B) Catcher/processor. Date CDQ fishing ended and the last haul or set number for the CDQ catch.

(vi) CDQ representative printed name, signature, and date of signature.

(n) CDQ catch report.

(1) Applicability. The CDQ representative must submit a catch report summarizing the CDQ and PSQ catch for each vessel each week that CDQ fishing occurs.

(2) Time limits and submittal. The CDQ representative must submit a CDQ catch report to NMFS no later than 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period.

(3) Information required. The CDQ representative must record the following information for each CDQ catch report.

(i) Whether the submission is an original or revised report.

(ii) The CDQ number.

(iii) Week ending date.

(iv) CDQ and PSQ catch information. The CDQ representative must report the following CDQ and PSQ catch information for each

catcher/processor harvesting and each catcher vessel delivering CDQ or PSQ during the weekly reporting period.

(A) Federal fisheries or processor number or ADF&G number if the vessel is not required to have a federal fisheries permit.

(B) Vessel name.

(C) Gear type used to harvest CDQ.

(D) Printed first and last name of vessel operator.

(E) The total weight to the nearest 0.01 mt or the total number of catch of all species in each category of CDQ or PSQ. Do not report the catch of nonallocated species from any vessel; the catch of crab, herring, or salmon PSQ from non-trawl vessels; or the catch of halibut PSQ from vessels using pot gear on the CDQ catch report.

(v) CDQ representative printed name, signature, and date of signature.

7. In § 679.7, paragraph (d) is revised and paragraph (i) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) CDQ.

(1) Participate in a Western Alaska CDQ program in violation of subpart C of this part.

(2) Fail to submit, submit inaccurate information on, or intentionally submit false information on any report, application, or statement required under this part.

(3) Participate as a community in more than one CDP unless

the second CDP is for a halibut CDQ fishery only.

(4) Harvest groundfish or halibut CDQ or PSQ on behalf of a CDQ group if the vessel is not listed as an eligible vessel on an approved CDP, before the CDQ representative has submitted a check-in report for the vessel, or after the CDQ representative has submitted a check-out report for the vessel.

(5) For a catcher/processor or shoreside processor to catch or take delivery of CDQ without a valid CDQ permit.

(6) For a CDQ group to exceed a CDQ or halibut PSQ.

(7) Use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or c. bairdi Tanner crab PSQ in Zone 1 is attained.

(8) Use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group's PSQ for c. bairdi Tanner crab in Zone 2 is attained.

(9) Use trawl gear to harvest groundfish CDQ in Herring Savings Areas (HSA) after the CDQ group's herring PSQ is attained.

(10) Use trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area between January 1 and April 15 after the CDQ group's chinook salmon PSQ is attained.

(11) Continue to use trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 once the CDQ group's non-chinook salmon PSQ has been reached.

(12) For a vessel operator to harvest CDQ fixed gear sablefish or halibut with other than fixed gear.

(13) For a catcher vessel using trawl gear to discard any groundfish CDQ species or salmon or herring PSQ before it is delivered to an eligible processor under a CDP.

(14) For a vessel using trawl gear to release CDQ catch from the codend before it is brought onboard the vessel and weighed on a certified scale. This includes, but is not limited to, "codend dumping" and "codend bleeding".

(15) For a catcher vessel to catch, retain on board, or deliver CDQ groundfish or halibut together with non-CDQ groundfish or halibut, except that IFQ sablefish and halibut may be caught, retained, or delivered together with CDQ groundfish and halibut by vessels using fixed gear.

(16) For a catcher/processor or an observed catcher vessel to combine catch from more than one CDQ group or from CDQ and IFQ in the same haul or set.

(17) Use any CDQ groundfish as a basis species for calculating retainable bycatch amounts under § 679.20.

(18) For a CDQ representative to use methods other than those approved in the CDP to report CDQ and PSQ on the CDQ catch report.

(19) Not comply with the requirements of a CDP.

* * * * *

(i) License Limitation Program. (1) Number of licenses--(i) Hold more than 10 groundfish licenses in the name of that person at any time, except as provided in paragraph (i)(1)(iii) of this section;

(ii) Hold more than 5 crab species licenses in the name of that person at any time, except as provided in paragraph

(i) (1) (iii) of this section; or

(iii) Hold more licenses than allowed in paragraphs (i) (1) (i) and (ii) of this section unless those licenses were issued to that person in the initial distribution of licenses. Any person who receives in the initial distribution more licenses than allowed in paragraphs (i) (1) (i) and (ii) of this section shall have no transfer applications for receipt of additional licenses approved until the number of licenses in the name of that person is less than the numbers specified in paragraphs (i) (1) (i) and (ii); furthermore, when a person becomes eligible to receive licenses by transfer through the provisions of this paragraph, that person is subject to the provisions in paragraphs (i) (1) (i) and (ii);

(2) Use gear other than fixed gear east of 140° W. longitude, regardless of the gear used to qualify for the license;

(3) Conduct directed fishing for license limitation groundfish without a groundfish license, except as provided in § 679.4(h) (2) of this part;

(4) Conduct directed fishing for crab species without a crab species license, except as provided in § 679.4(h) (2) of this part;

(5) Process license limitation groundfish on board a vessel without a groundfish license with a Catcher/processor

designation;

(6) Process crab species on board a vessel without a crab species license with a Catcher/processor designation;

(7) Use a license on a vessel that has an LOA that exceeds the MLOA of the vessel that was used to originally qualify for that license;

(8) Lease a groundfish or crab species license.

8. Section 679.20 paragraph (c) is revised, and paragraph (e) (3) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(c) Annual Specifications-- (1) Proposed specifications--

* * *

(iii) BSAI. The BSAI proposed specifications will specify the annual TAC and initial TAC amounts for each target species and the "other species" category and apportionments thereof established under § 679.20(a) (2), prohibited species catch allowances established under § 679.21, seasonal allowances of pollock TAC (including pollock CDQ), and reserve amounts established under § 679.31(b), (d), (e) and (f) for pollock CDQ, sablefish CDQ, groundfish CDQ, and PSQ.

(2) Interim specifications. * * *

(ii) BSAI. Except for pollock and the hook and line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established under § 679.31(b), (d), (e), and (f), and one

quarter of the proposed prohibited species catch allowance established under § 679.21.

(A) The interim specifications for pollock will be equal to the first seasonal allowance under paragraph (a)(5)(i)(A) of this section that is published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock will be equal to the first seasonal allowance that is published in the proposed specifications under paragraph (c)(1) of this section.

(3) Final specifications. * * *

(iii) The final specifications will specify the annual TAC for each target species and the "other species" category and apportionments thereof, prohibited species catch allowances, seasonal allowances of the pollock TAC (including pollock CDQ), and the reserve amounts established under § 679.31(b), (d), (e) and (f) for pollock CDQ, sablefish CDQ, groundfish CDQ, and PSQ, respectively.

* * * * *

(e) * * *

(3) CDQ. Retained CDQ species may not be used as a basis species to calculate maximum retainable bycatch amounts.

* * * * *

9. In § 679.21 paragraphs (b) and (e) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(2) * * *

* * *

(ii) Sort its catch immediately after retrieval of the gear and, except as provided below, return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition, after allowing for sampling by an observer if an observer is aboard. The following exceptions are made.

(A) Salmon prohibited species catch in the BSAI non-CDQ groundfish fisheries under paragraph (c) of this section and § 679.26.

(B) Catcher vessels using trawl gear in the CDQ fisheries under Subpart C of this part are required to retain all salmon and herring prohibited species catch and deliver it to a processor with a valid CDQ permit.

(3) Rebuttable presumption. Except as provided under paragraph (c) of this section, § 679.26, or for salmon and herring retained by catcher vessels using trawl gear in the CDQ fisheries, it will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(e) * * *

(1) * * *

(v) Chinook salmon. The PSC limit of chinook salmon caught while conducting any non-CDQ trawl fishery for groundfish in the BSAI between January 1 and April 15 is 44,400 fish. A chinook salmon prohibited species catch reserve of 3,600 fish is established for the CDQ fisheries under § 679.31.

(vi) Non-chinook salmon. The PSC limit of non-chinook salmon caught while conducting any non-CDQ trawl fishery for groundfish in the CVOA between August 15 and October 14 is 38,850 fish. A non-chinook salmon prohibited species catch reserve of 3,150 fish is established for the CDQ fisheries under § 679.31.

(3) * * *

(iv) * * *

(G) CDO fisheries. 7.5 percent of the PSC limits are apportioned to the CDQ fisheries under § 679.31.

(4) * * *

(ii) * * *

(F) CDO fisheries. 7.5 percent of the non trawl halibut PSC limit is apportioned to the CDQ fisheries under § 679.31.

10. In § 679.23, paragraph (e) (3) is amended to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * * * *

(3) CDO fishing seasons.

(i) Halibut CDO.

* * *

(ii) Sablefish CDQ.

* * *

(iii) Groundfish CDQ. Directed fishing for groundfish species other than fixed gear sablefish under the Western Alaska CDQ program pursuant to subpart C of this part is authorized from 0001 hours, A.l.t., January 1, through the end of the fishing year, except as provided in paragraph (c) of this section.

11. In Subpart B, § 679.28 paragraph (a) is revised and new paragraphs (c) through (f) are added as follows:

§ 679.28 Equipment and Operational Requirements for Catch Weight Measurement.

(a) Applicability. This section contains the requirements for scales certified by NMFS to weigh catch at sea, scales certified by the State of Alaska, observer sampling stations, and certified bins for volumetric estimates of catch weight. Requirements for specific vessels or processors to use this equipment are made elsewhere in this Part.

* * * * *

(c) Scales certified by the State of Alaska. Scales used to weigh groundfish catch that also are required to be certified by the State of Alaska under Alaska Statutes 45.75 must meet the following requirements.

(1) Certification. Scales must display a valid State of Alaska certification sticker indicating that the scale was certified within 12 months of the date of inspection.

(2) The scale and scale display must be visible

simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be able to read the scale display at all times.

(3) Printed scale weights. Printouts of the scale weight of each haul, set, or delivery must be made available to observers, NMFS personnel, or an authorized officer at the time they are printed and anytime thereafter for the duration of the fishing year. Printouts must be retained by the operator or manager as specified in 679.5(a)(15).

(d) Observer Sampling Station.

(1) Accessibility. All of the equipment required for an observer sampling station must be made available to the observer at all times while a sampling station is required and the observer is on board the vessel.

(2) Location.

(i) Motherships or catcher/processors and catcher vessels using trawl gear. The observer sampling station must be located within 4 m (13 ft) of the location from which the observer samples unsorted catch.

(ii) Longline or pot catcher vessels or catcher/processors. The observer sampling station must be located within 3 m (approximately 10 ft) of the location where fish are brought on board the vessel.

(3) Minimum work space. The observer must have at least 1.8 m by 2.5 m or 4.5 m² (approximately 6 ft by 8 ft or 48 ft²)

of working area, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright in the area in front of the table and scale.

(4) Table. The observer's sampling table must be at least 0.6 m (2 ft) deep, 1.2 m (4 ft) wide and 0.9 m (3 ft) high. It may be no more than 1.1 m (3.5 ft) high. The entire surface area of the table must be available for the observer to use. Any area used for the motion-compensated platform scale is in addition to the minimum space requirements of the table. The observer's sampling table must be secured to the floor or wall.

(5) Motion-compensated platform scale.

(i) Specifications. The electronic motion-compensated platform scale must have a capacity of at least 60 kg. The scale must be mounted within 1 m (3.3 ft) of the observer sampling table.

(ii) Test weights. Test weights totaling at least 50 kg in 5-kg, 10-kg, or 20-kg sizes must be maintained on board the vessel at all times when an observer sampling station is required. Each test weight must have an identifying number or character code stamped or otherwise permanently affixed to it. The identification number and weight of each test standard to the nearest 0.1 kg must be verified in writing annually by the scale manufacturer or a scale inspector authorized by the Regional Administrator. This written verification must be signed and dated and maintained on board the vessel at all times.

(iii) Maximum permissible error at sea. The motion compensated platform scale must weigh the test weights to within 0.5 percent of their known weight when tested at sea by an observer.

(6) Other requirements. The sampling station must include floor grating, adequate lighting, and a hose that supplies water to the observer.

(7) Requirements for sampling catch. On motherships and catcher/processors using trawl gear, the conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into observer sampling baskets. The diverter board must be located after the certified scale used to weigh total catch so that the observer can use this scale to weigh large samples.

(e) Certified Bins for Volumetric Estimates of Catch Weight

(1) Certification. The information required in this paragraph must be prepared, dated, and signed by a licensed engineer with no financial interest in fishing, fish processing, or fish tender vessels. Complete bin certification documents must be submitted to the Regional Administrator prior to harvesting or receiving groundfish from a fishery in which certified bins are required and must be maintained on board the vessel and made available to the observer at all times.

(2) Specifications.

(i) Measurement and marking. The volume of each bin must be determined by accurate measurement of the internal dimensions of

the bin. The internal walls of the bin must be permanently marked and numbered in 10-cm increments indicating the level of fish in the bin in cm. All marked increments and numerals must be readable from the outside of the bin through a viewing port or hatch at all times. Marked increments are not required on the wall in which the viewing port is located unless these increments are necessary to determine the level of fish in the bin from another viewing port. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by an observer or authorized officer. For bin certification documents dated after [INSERT EFFECTIVE DATE 30 DAYS AFTER FR], the numerals at the 10-cm increment marks must be at least 4 cm high.

(ii) Viewing ports. Each bin must have a viewing port or ports from which the internal bin markings and numerals on all walls of the bin, except the wall in which the viewing port is placed, may be seen from the outside of the bin.

(3) Information required. For bin certification documents submitted after [INSERT EFFECTIVE DATE 30 DAYS AFTER FR], the person certifying the bins must provide the following information:

(i) Vessel name.

(ii) Date the engineer measured the bins and witnessed the location of the marked increments and numerals.

(iii) A diagram, to scale, of each bin showing the location of the marked increments on each internal wall of the bin, the

location, and dimensions of each viewing port or hatch, and any additional information needed to estimate the volume of fish in the bin.

(iv) Tables indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins.

(v) Instructions for determining the volume of fish in each bin from the marked increments and table.

(vi) Date completed bin certification documents are signed and signature of person responsible for certification.

(4) Recertification. Bin volumes and marked and numbered increments must be recertified if the bin is modified in a way that changes its size or shape or if marking strips or marked increments are moved or added.

(5) Operational requirements.

(i) Placement of catch in certified bins. All catch must be placed in a bin certified under this paragraph to determine total catch weight prior to sorting. Refrigerated seawater tanks may be used for volumetric estimates only if the bins comply with all other requirements of this paragraph, if no water is in the bins before fish are added, and if no water is added to the bins before the observer records the level of fish in the bin. No adjustments of volume will be made for the presence of water in the bin.

(ii) Prior notification. Vessel operators must notify observers prior to any removal or addition of fish from each bin

used for volumetric measurements of catch so that an observer may make bin volume estimates prior to fish being removed from or added to the bin. Once a volumetric estimate has been made, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric estimates of catch weight until an observer indicates that bin volume estimates have been completed and any samples of catch required by the observer have been taken.

(iii) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(iv) The bins must not be filled in a manner that obstructs the viewing ports or prevents the observer from seeing the level of fish throughout the bin.

12. Section 679.30 is revised to read as follows:

§ 679.30 General CDQ regulations.

(a) Application procedure. The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel harvesting or processing CDQ or PSQ under a CDP must comply with all other requirements of this part. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a CDQ group must re-apply for further allocations on a competitive basis with

other CDQ groups. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A CDQ group may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period which will be announced by the State. A proposed CDP must include the following information:

(1) Community development information. Community development information includes:

(i) Project description. The CDQ group shall provide a detailed description of all proposed CDQ projects. This description should include the short and long-term benefits to the CDQ group from the proposed CDQ projects. CDQ projects should not be designed with the expectation of CDQ allocations beyond those requested in the proposed CDP.

(ii) Project schedule. A proposed CDP must include a schedule for the completion of each CDQ project with measurable milestones for determining the progress of each CDQ project.

(iii) Employment. A proposed CDP must describe the number of individuals to be employed through the CDQ projects, and the nature of the work and career advancement potential.

(iv) Community eligibility. The proposed CDP must list each participating community. Each participating community must be listed in Table 7 of this part or meet the criteria for an eligible community under § 679.2.

(v) Community Support. The CDQ group and the managing organization must demonstrate the support of each community

participating in the proposed CDP through an official letter approved by the governing body of each such community.

(vi) Qualified Applicant. The proposed CDP must be submitted by a qualified applicant.

(2) Managing organization information. A proposed CDP must include the following information about the managing organization:

(i) Structure and personnel. This information includes a description of the management structure and key personnel, such as resumes and references; and includes the name, address, fax number, and telephone number of the CDQ representative.

(ii) Management qualifications. This information includes a description of how the managing organization is qualified to carry out the CDP projects in the proposed CDP, and a demonstration that the managing organization has the management, technical expertise, and ability to manage CDQ allocations and prevent exceeding a CDQ or PSQ.

(iii) Legal relationship. The proposed CDP must document the legal relationship between the CDQ group and the managing organization (if the managing organization is different from the CDQ group). This information must clearly describe the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(iv) Board of directors. The CDP must include the name, address, and telephone number of each member of the board of directors of the CDQ group. If a qualified applicant represents

more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented that is chosen by election-at-large. For the purposes of this paragraph, election-at-large means that all registered voters in the community are eligible to vote.

(3) Business information. A proposed CDP must include the following business information:

(i) Business relationships. This information includes a description of all business relationships between the CDQ group and all individuals who have a financial interest in a CDQ project or subsidiary venture. These would include, but are not limited to any arrangements for management and audit control; and any joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(ii) Profit sharing. Description of all profit sharing arrangements.

(iii) Funding. Description of all funding and financing plans.

(iv) General budget for implementing the CDP. A general account of estimated income and expenditures for each CDQ project that is described in paragraph (a)(1)(i) of this section for the total number of calendar years that the CDP is in effect.

(v) Business plan for proposed CDO investments.

(vi) Financial statement for the CDO group. The most recent audited income statement, balance sheet, cash flow statement,

management letter, and agreed upon procedures report.

(vii) Organizational chart. A visual representation of the CDQ group's entire organizational structure including all divisions, subsidiaries, joint ventures, and partnerships. This chart will include the type of legal entity (i.e., non-profit corporation, limited liability corporation, etc), state of registration, and percentage of ownership.

(4) Request for CDQ and PSQ allocations. A list of the percentage of each CDQ reserve and PSQ reserve, as defined at 679.31(b)-(g), that is being requested for groundfish CDQ, PSQ, halibut CDQ, and crab CDQ. The request for allocations of groundfish CDQ, halibut CDQ, and PSQ must identify percentage allocations requested for target species and bycatch species for each target fishery. Target fishery designations must include the primary target species of the fishery and gear type of the vessel that will be used to harvest the catch.

(5) Fishing plan for groundfish and halibut CDQ fisheries. The following information must be provided for all vessels and processors that will be harvesting groundfish and halibut CDQ.

(i) List of eligible vessels and processors.

(A) Vessels. A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership) for each vessel that will be used to catch or process CDQ and PSQ. Any CDQ vessel that is exempt from the License Limitation Program under § 679.4(h)(2)(iv) must be identified as such.

(B) Shoreside processors or buying stations. A list of the name, Federal processor permit number, and location of each shoreside processor or buying station that is required to have a Federal processor permit under § 679.4(f) and will take deliveries of, or process, CDQ catch.

(C) Buyers of halibut CDQ. List of processors of halibut CDQ that are not required to have a Federal Processor Permit under § 679.4(f), including the name of the buyer or processor, mailing address, telephone number, and location where halibut CDQ will be landed.

(ii) Methods for estimating CDQ and PSQ catch. A description of the methods or the source of the data that will be used to estimate catch weight of CDQ and PSQ for each vessel or processor proposed as eligible under the CDP. The CDP must specify one of the following for each vessel or processor.

(A) NMFS estimates. The CDQ group specifies that it will use the procedures identified as "NMFS estimates" at § 679.32(e)(3). For catcher vessels using nontrawl gear, the CDP also must specify whether the vessel will be retaining all groundfish CDQ and following the requirements of § 679.32 (e)(3)(iii)(A) or will be discarding some CDQ catch at sea and following the requirements of § 679.32 (e)(3)(iii)(B).

(B) Alternative procedure. The CDQ group may propose to sort and weigh all catch by species on processor vessels or to obtain larger sample sizes than would be required under § 679.32(e)(3). Alternatives to the requirement for a certified

scale or an observer sampling station may not be proposed. NMFS will review the proposal and determine whether the following requirements are met.

(A) Each haul, set, or pot on an observed vessel can be sampled by an observer for species composition.

(B) Any proposal to sort catch before it is weighed assures that the sorting and weighing process will be monitored by an observer.

(C) The CDQ observer is required to be on duty no more than 12 hours in each 24-hour period and is required to sample no more than 9 hours in each 24-hour period.

(D) The CDQ observer on a vessel using trawl gear is required to sample no more than 3 hauls in each 24-hour period.

(iii) Amendments to the list of eligible vessels and processors. The list of eligible vessels and processors may be amended by submitting the information required in sections (i) and (ii) of this paragraph as a technical amendment to the CDP.

(6) CDQ planning.

(i) Transition plan. A proposed CDP must include an overall plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries for each CDQ project.

(ii) Post-allocation plan.

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(b) Public hearings on CDQ application. When the CDQ application period has ended, the State must hold a public

hearing to obtain comment on the proposed CDPs from all interested persons. The hearing must cover the substance and content of proposed CDPs so that the general public, and particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of hearing date and location. The State must make available for public review, at the time of public notification of the hearing, all State materials pertinent to the hearing.

(c) Council consultation. Before the State sends its recommendations for approval of proposed CDPs to NMFS, the State must consult with the Council, and make available, upon request, proposed CDPs that are not part of the State's recommendations.

(d) Review and approval of proposed CDPs. The State must transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS along with the findings and the rationale for the recommendations by October 7. The State shall determine in its recommendations for approval of the proposed CDPs that each proposed CDP meets all applicable requirements of this part. Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the proposed CDPs to determine whether all applicable requirements have been met. In the event of approval of the CDP, NMFS must notify the State in writing that the proposed CDPs are approved by NMFS and are consistent with the requirements for proposed CDPs. If NMFS finds that a proposed CDP does not comply

with the requirements of this part, NMFS must so advise the State in writing, including the reasons therefor. The State may submit a revised proposed CDP along with revised recommendations for approval to NMFS.

(e) Transfer. CDQ groups may transfer CDQ allocations, CDQ, PSQ allocations, or PSQ among each other, with restrictions. The CDQ group making a transfer is the transferor, and the CDQ group receiving a transfer is the transferee. The transferor and transferee must apply separately to NMFS for a transfer. When NMFS approves a transfer, the transferor's account balance for the transferred CDQ or PSQ species is decreased by the amount transferred, and the transferee's account balance for the transferred CDQ or PSQ species is increased by the amount transferred.

(1) CDQ allocation. The transfer of any amount of a CDQ allocation is a substantial amendment to a CDP as described in paragraph (h) (4) of this section. Upon approval of substantial amendments from the transferor and from the transferee, the transfer will be effective beginning on January 1 of the calendar year following approval of the transfer, for the duration of the CDP.

(2) 10 percent or less of a CDQ. A CDQ group may transfer up to 10 percent of a CDQ to another CDQ group during a calendar year. The transfer of 10 percent or less of a CDQ is a technical amendment to a CDP as described in paragraph (h) (5) of this section. A transfer of 10 percent or less of a CDQ will become

effective on the same date that NMFS approves the technical amendment requesting the transfer, and will be effective until December 31 of the year in which the transfer was approved.

(3) More than 10 percent of a CDQ. The transfer of more than 10 percent of a CDQ is a substantial amendment to a CDP as described in paragraph (h)(4) of this section. A transfer of more than 10 percent of a CDQ will become effective on the same date that NMFS approves the substantial amendment requesting the transfer, and will be effective until December 31 of the year in which the transfer was approved.

(4) PSQ allocation. The transfer of a PSQ allocation is a substantial amendment to a CDP as described in paragraph (h)(4) of this section. Such substantial amendments must be submitted to NMFS during the period from January 1 through January 31. A substantial amendment requesting a transfer of a PSQ allocation must be part of a request for the transfer from one or more CDQ allocations. The requested amount of PSQ allocations must be the amount reasonably required for bycatch needs during the harvesting of a CDQ target species. The transfer of a PSQ allocation is effective for the duration of the CDP.

(5) PSQ. The transfer of PSQ is a substantial amendment to a CDP as described in paragraph (h)(4) of this section. Such substantial amendments must be submitted to NMFS during the period from January 1 through January 31. A substantial amendment requesting a transfer of PSQ must be part of a request for the transfer from one or more CDQs. The requested amount of

PSQs must be the amount reasonably required for bycatch needs during the harvesting of the CDQ target species. A transfer of PSQ is effective until December 31 of the year in which the transfer was approved.

(f) CDQ group responsibilities. A CDQ group must:

(1) Direct and supervise all activities of the managing organization.

(2) Maintain the capability to communicate with all vessels harvesting its CDQ and PSQ at all times.

(3) Monitor the catch of each CDQ or PSQ.

(4) Submit the CDQ check-in/check-out report and CDQ catch report described at § 679.5(m) and (n).

(5) Ensure that no CDQ or halibut PSQ is exceeded.

(6) Ensure that the CDQ group's CDQ harvesting vessels and CDQ processors will:

(i) Provide observer coverage, equipment, and operational requirements for CDQ catch monitoring.

(ii) Provide for the communication of observer data from their vessel to NMFS and the CDQ representative.

(iii) Maintain contact with the CDQ group for which it is harvesting CDQ and PSQ; and

(iv) Cease fishing operations when requested by the CDQ group.

(7) Comply with all requirements of this part.

(g) Monitoring of CDPs.

(1) Annual progress report.

(i) The State must submit an annual progress report to NMFS by October 30 of each year, for the previous calendar year.

(ii) Annual progress reports will be organized on a project by project basis and include information describing how each CDP has met its scheduled milestones for each CDQ project, and an estimation by the State whether each of the CDQ projects is likely to be successful.

(iii) The annual report will include a description by the State of any problems or issues with a CDP that the State encountered during the annual report year.

(2) Annual budget report.

(i) An annual budget report is a detailed estimation of income from any CDQ project and estimated expenditures for each subsidiary, division, joint venture, partnership, investment activity, or CDQ project as described in paragraph (a)(1)(i) of this section for a calendar year. A CDQ group will identify the administrative costs for each CDQ project, and a CDQ group's total administrative costs will be considered a separate CDQ project.

(ii) An annual budget report must be submitted to NMFS by December 31 preceding the year for which the annual budget applies.

(iii) An annual budget report is approved upon receipt by NMFS, unless subsequently disapproved by NMFS in writing by December 31. If disapproved, the annual budget report will be returned to the State for revision and resubmittal to NMFS.

(3) Annual budget reconciliation report. A CDQ group must reconcile its annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDQ project that is described in paragraph (a) (1) (i) of this section. If a general budget, as submitted in accordance with paragraph (a) (3) (iv) of this section, is no longer accurate due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation. The revised general budget must be included with the annual budget reconciliation report.

(4) Substantial amendments. A CDP is a working business plan and must be kept up to date.

(i) Substantial amendments to a CDP will require written notification by the CDQ group to the State. The State will forward the amendment to NMFS with recommendations for approval or disapproval of the amendment.

(ii) NMFS will notify the State in writing of approval or disapproval of the amendment within 30 days of receipt of the amendment and the State's recommendation. Except as stated in (e), once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the requirements of this subpart, NMFS shall notify

the State in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, any of the following:

(A) Any change in the applicant communities or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDP applicant and its harvesting or processing partner, or a change in a CDP project, if such change is deemed by the Governor or NMFS to be a material change.

(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than ten percent of a CDQ.

(v) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is a

substantial amendment.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the revised pages of the CDP for replacement in the CDP binder. The revised pages will have the revision date noted with the page number on all affected pages. The table of contents may also need to be revised to reflect any changes in pagination.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(5) Technical amendments.

(i) Any change to a CDP that is not a substantial amendment as defined in paragraph (g)(4)(iv) of this section is a technical amendment. The CDQ group must notify the State in writing of any technical amendment. The State will forward the technical amendment to NMFS with its recommendations for approval or disapproval of the amendment. A technical amendment is approved by NMFS and is effective when NMFS provides the State with written notice of the technical amendment's receipt.

(ii) Notification of a technical amendment must include:

(A) The pages of the CDP, with the text highlighted to show

the proposed deletions and additions.

(B) The CDP pages with the proposed revisions that can be inserted into the CDP binder. All revised CDP pages must include the revision date, amendment identification number, and CDP page number. The table of contents may also need to be revised to reflect any changes in pagination.

13. Section 679.31 is revised to read as follows:

§ 679.31 CDQ reserves.

(a) Non-specific CDQ reserve. Annually, NMFS must apportion 15 percent of each squid, arrowtooth flounder, and "other species" CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to its squid, arrowtooth flounder, or "other species" is a technical amendment as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

(b) Pollock CDQ reserve (applicable through December 31, 1998). In the proposed and final harvest specifications required under § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district of the BSAI will be apportioned to a CDQ reserve for each subarea or district.

(c) Halibut CDQ reserve.

(1) NMFS will annually withhold the proportions of the halibut catch limit that are specified in paragraph (c)(2) for

use as a CDQ reserve.

(2) The proportions of the halibut catch limit annually withheld for purposes of the CDQ program, exclusive of issued QS, are as follows for each IPHC regulatory area:

(i) Area 4B. In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area. For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nm from the point where the boundary of the IPHC regulatory area intersects land.

(ii) Area 4C. In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in IPHC regulatory area 4C.

(iii) Area 4D. In IPHC regulatory area 4D, 30 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC regulatory areas 4D and 4E.

(iv) Area 4E. In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available for the halibut CDQ program to communities located in or proximate to IPHC regulatory area 4E. A fishing trip limit of 6,000 lb (2.7 mt) will apply to halibut CDQ harvesting in IPHC regulatory area 4E.

(d) Sablefish CDQ reserves.

(1) Fixed gear sablefish CDQ reserve. In the proposed and

final harvest limit specifications required under § 679.20(c), NMFS will specify 20 percent of the fixed gear allocation of sablefish in each subarea or district of the BSAI as a fixed-gear sablefish CDQ reserve, exclusive of issued QS.

(2) Sablefish CDQ reserve. In the proposed and final harvest limit specifications required under § 679.20(c), NMFS will specify seven and one-half percent of the trawl gear allocation of sablefish in each subarea or district of the BSAI as a sablefish CDQ reserve.

(e) Groundfish CDQ reserve. In the proposed and final harvest specifications required under § 679.20(c), one-half of the amount of each groundfish TAC that is placed in the reserve for each subarea or district of the BSAI will be apportioned to a separate CDQ reserve for each subarea or district. The groundfish CDQ reserve does not include sablefish. If the proposed and final harvest limit specifications required under § 679.20(c) changes the groundfish species comprising the "other species" category, then any CDQ allocations of "other species" category groundfish would change according to the changed species mix of the "other species" category.

(f) Crab CDQ reserve. The following percentages of the king and Tanner crab in the Bering Sea and Aleutian Islands Area that has a guideline harvest level specified by the State that is available for commercial harvest will be apportioned to a crab CDQ reserve:

(1) For calendar year 2000, and thereafter, 7.5 percent;

(2) For calendar year 1999 (applicable through December 31, 1999), 5 percent; and

(3) For calendar year 1998 (applicable through December 31, 1998), 3.5 percent.

(g) PSQ reserve. Seven and one-half percent of the PSC limits specified at § 679.21(e) for red king crab in Zone 1, Tanner crab (c. bairdi) in Zone 1, Tanner crab in Zone 2, halibut, and Pacific herring will be apportioned to PSQ reserves. 3,600 chinook salmon and 3,150 non-chinook salmon will be apportioned to PSQ reserves.

14. Section 679.32 is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) Applicability.

(i) The CDQ representative, the operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor fishing in the groundfish or halibut CDQ fisheries must comply with the requirements of this section.

(ii) Pollock, halibut, and fixed-gear sablefish CDQ fishing in 1998 (applicable through December 31, 1998). Regulations governing the catch of pollock, halibut, fixed-gear sablefish CDQ in 1998 are at paragraphs (f) and (g) of this section. Vessels and processors harvesting only these CDQ species are not required to comply with paragraphs (b) through (e) of this section in 1998, unless specifically required to do so in paragraphs (f) and (g). The catch of pollock with any authorized gear and sablefish with fixed gear in the multispecies CDQ fisheries in 1998 will

not accrue to the CDQs for these species.

(b) Prohibited species catch. Time and area closures required once the CDQ group has reached its salmon, herring, or crab PSQs are listed in § 679.7(d)(7)-(11). The catch of salmon, crab, or herring PSQ by vessels using other than trawl gear and the catch of halibut PSQ by vessels using pot gear does not accrue to the PSQ for these species.

(c) Gear restrictions. Fixed gear sablefish and halibut CDQ must be harvested with fixed gear only. Catch of sablefish with fixed gear may accrue to the fixed gear sablefish CDQ reserve or the sablefish CDQ reserve. Catch of sablefish with other than fixed gear will accrue to the sablefish CDQ reserve.

(d) Requirements for vessels and processors. Vessels and processors participating in the CDQ fisheries must comply with the following requirements.

(1) Unobserved catcher vessels. Catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish and halibut CDQ until it is delivered to a processor with a valid CDQ permit. The following additional requirements must be met.

(i) Catcher vessels using trawl gear must discard halibut and crab PSQ at-sea. The weight of halibut PSQ and numbers of crab PSQ must be reported on the ADF&G fish ticket and to the CDQ representative within 24 hours of the completion of the fishing trip.

(ii) Catcher vessels using non-trawl gear must discard all halibut PSQ and report the weight of halibut discarded on the

ADF&G fish ticket and to the CDQ representative within 24 hours of the completion of the fishing trip.

(2) Catcher vessels with observers. Catcher vessels greater than or equal to 60 ft (18.3 m) LOA must comply with the following requirements in addition to the minimum observer coverage requirements at § 679.50(c)(4).

(i) Catcher vessels using trawl gear must:

(A) Retain all CDQ species, salmon PSQ, and herring PSQ until it is delivered to a processor with a valid CDQ permit.

(B) Retain all halibut and crab PSQ in a bin or other location until it is counted and sampled by a CDQ observer.

(C) Provide space on the deck of the vessel for the CDQ observer to sort and store catch samples and a place from which to hang the observer sampling scale.

(ii) Catcher vessels using non-trawl gear must comply with one of the following procedures as identified in an approved CDP.

(A) Retain all CDQ species. Retain all CDQ species until they are delivered to a processor with a valid CDQ permit and have all of the halibut PSQ counted by the CDQ observer and sampled for average weight.

(B) Discard some CDQ species at-sea. CDQ species may be discarded at sea if the following requirements are met.

(1) The vessel owner provides an observer sampling station that complies with § 679.28(d) so that the CDQ observer can accurately determine the average weight of discarded CDQ species.

(2) CDQ permit. A valid CDQ permit is on board the vessel at

all times while harvesting, processing, or transporting CDQ.

(3) Each set or pot is sampled for species composition by a CDQ observer.

(4) The CDQ group specifies in the CDP that the CDQ and PSQ catch weight and numbers will be based on the CDQ observer's estimates rather than the processor's report of landed catch weight and numbers.

(3) Shoreside processors and buying stations. All shoreside processors and buying stations taking CDQ deliveries must comply with the following requirements in addition to the minimum observer coverage requirements at § 679.50(d)(4).

(i) CDQ permit. Have a valid CDQ permit on site at the shoreside processor at all times.

(ii) CDQ and PSQ by weight. All groundfish and halibut CDQ or PSQ and any halibut and herring PSQ delivered to a shoreside processor or buying station must be sorted by CDQ or PSQ species or species group and weighed on a scale certified under § 679.28(c) of this part.

(iii) PSQ by number. The shoreside processor must count all salmon or crab PSQ.

(iv) Prior notice of offloading schedule. The manager of each shoreside processor or buying station must notify the CDQ observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the CDQ observer an opportunity to monitor the weighing of the entire delivery.

(v) All sorting and weighing of CDQ and PSQ must be monitored by a CDQ observer.

(4) Catcher/processors and motherships. Catcher/processors and motherships must comply with the following requirements in addition to the minimum observer coverage requirements described at § 679.50(c)(4).

(i) CDQ permit. Have a valid CDQ permit on board the vessel at all times harvesting, processing, or transporting CDQ.

(ii) Observer sampling station. Operators of catcher/processors and motherships must provide an observer sampling station as described in § 679.28(d).

(iii) Catcher/processors using trawl gear and motherships. Catcher/processors using trawl gear and motherships must weigh all catch on a scale certified under § 679.28(b) of this part. Catch from each haul must be weighed separately. Catch must not be sorted before it is weighed unless a provision for doing so is approved by NMFS for a specific vessel in the CDP. Each CDQ haul must be sampled by a CDQ observer for species composition and the vessel operator must allow CDQ observers to use the certified scale to weigh partial haul samples.

(iv) Catcher/processors using non-trawl gear. Each CDQ set or pot must be sampled by a CDQ observer for species composition and average weight.

(e) Recordkeeping and reporting.

(1) The CDQ representative must submit the CDQ check-in/check-out report and the CDQ catch report described at §

679.5(m) and (n).

(2) The operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must record all catch in the CDQ fisheries, including all groundfish species and prohibited species caught, taken, or harvested in each haul or set as required at § 679.5.

(3) NMFS's preferred estimates of CDQ and PSQ catch. NMFS will use the following information to verify the CDQ catch reports unless an alternative catch estimation procedure is approved by NMFS in the CDP under § 679.30(a)(5). CDQ groups may designate the catch estimation procedures listed below as procedures that will be used in their CDQ catch reports by specifying "NMFS estimates" in their CDP, except in the case of a catcher vessel using non-trawl gear, where a choice between two methods must be made.

(i) Unobserved catcher vessels. Reports of the weight or numbers of all CDQ and PSQ species on ADF&G fish tickets if all CDQ species, salmon PSQ, and herring PSQ are retained on board the vessel, delivered to a processor with a valid CDQ permit, and sorted and weighed in compliance with paragraph (d)(3) of this section.

(ii) Observed catcher vessels using trawl gear.

(A) The CDQ observer's estimate of halibut and crab PSQ.

(B) Reports of weight or numbers of all CDQ and PSQ species on ADF&G fish tickets if all CDQ species, salmon PSQ, and herring PSQ are retained on board the vessel, delivered to a processor

with a valid CDQ permit, and sorted and weighed in compliance with paragraph (d) (3) of this section.

(iii) Observed catcher vessels using non-trawl gear.

(A) The CDQ observer's estimates of the weight of halibut PSQ and the reports of weight or numbers of CDQ species on ADF&G fish tickets if all CDQ species are retained on board the vessel, delivered to a processor with a valid CDQ permit, and sorted and weighed in compliance with paragraph (d) (3) of this section.

(B) The CDQ observer's estimate of the weight of all CDQ and PSQ species if any CDQ species are discarded at sea.

(iv) Catcher/processors using trawl gear and motherships.

The CDQ observer's estimate of the weight and numbers of CDQ and PSQ species as determined by applying the CDQ observer's species composition sampling data for each haul to the total weight of haul as determined by weighing all catch from each haul on a scale certified under § 679.28(b).

(v) Catcher/processors using non-trawl gear. The CDQ observer's estimates of the weight and numbers of CDQ and PSQ species as determined by sampling each set or pot to determine the number and average weight of each CDQ and PSQ species.

(f) Pollock CDQ (applicable through December 31, 1998).

(1) Applicability. Vessels and processors harvesting pollock CDQ in 1998 must comply with the requirements of this paragraph.

(2) Catch of non-pollock. The catch of all non-pollock species for which a TAC or PSC limit is specified will accrue against the non-CDQ groundfish fishery TACs and PSC limits.

Regulations governing maximum retainable bycatch amounts in the non-CDQ groundfish fisheries must be complied with while harvesting pollock CDQ.

(3) Recordkeeping and reporting.

(i) The CDQ representative must submit the CDQ catch report described at § 679.5(n). Catch from the pollock CDQ fisheries must be identified separately from catch in other CDQ fisheries on the CDQ catch report. Harvest of species other than pollock in the pollock CDQ fisheries must not be reported on the CDQ catch report.

(ii) The CDQ representative must submit the CDQ check-in/check-out report described at § 679.5(n) and indicate that the vessel will be participating in the pollock CDQ fishery.

(iii) The operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must record all catch in the CDQ fisheries, including all groundfish species and prohibited species caught, taken, or harvested in each haul or set as required at § 679.5.

(4) Observer coverage. Two observers are required on all catcher/processors and motherships while harvesting, processing, or taking deliveries of pollock CDQ, one observer is required on all catcher vessels harvesting pollock CDQ, and one observer is required in the shoreside processing plant while pollock CDQ is being delivered, sorted, or processed.

(5) Estimation of the weight of pollock CDQ.

(i) Shoreside processors and buying stations. All pollock CDQ

delivered to a shoreside processor or buying station must be weighed on a scale certified under § 679.28(c) of this part. The manager of each shoreside processor or buying station must notify the observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) Motherships and catcher/processors. Operators of mothership and catcher/processors must provide the holding bins and comply with the operational requirements at § 679.28(e) in order for volumetric estimates of total catch weight to be made.

(g) Sablefish and halibut CDQ fisheries (applicable through December 31, 1998).

(1) Applicability. Vessels and processors harvesting fixed gear sablefish or halibut CDQ in 1998 must comply with the requirements of this paragraph.

(2) Catch of other groundfish. All groundfish for which a TAC is specified and all prohibited species caught during the sablefish and halibut CDQ fisheries will accrue to the non-CDQ groundfish TACs and PSC limits. Regulations governing maximum retainable bycatch amounts in the non-CDQ groundfish fisheries must be complied with while harvesting fixed-gear sablefish and halibut CDQ.

(3) Permits. The Regional Director will issue a halibut and/or sablefish CDQ permit to the managing organization responsible for carrying out an approved CDQ project. A copy of

the halibut and/or sablefish CDQ permit must be carried on any fishing vessel operated by or for the managing organization, and be made available for inspection by an authorized officer. Each halibut and/or sablefish CDQ permit will be non-transferable and will be effective for the duration of the CDQ project or until revoked, suspended, or modified.

(4) CDQ cards. The Regional Director will issue halibut and/or sablefish CDQ cards to all individuals named on an approved CDP application. Each halibut and/or sablefish CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut and/or sablefish for debit against its CDQ allocation.

(5) Alteration. No person may alter, erase, or mutilate a halibut and/or sablefish CDQ permit, card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, or mutilated will be invalid.

(6) Landings. All landings of halibut and/or sablefish harvested under an approved CDQ project must be landed by a person with a valid halibut and/or sablefish CDQ card to a person with a valid registered buyer permit, and reported in compliance with § 679.5(1)(1) and (1)(2).

(7) Recordkeeping and reporting. Vessels and processors with Federal fisheries or processor permits under § 679.4(f) must report all catch of groundfish, including sablefish CDQ, and prohibited species from the fixed gear sablefish and halibut CDQ

fisheries on logbooks and weekly production reports required under § 679.5. Catch in the fixed gear sablefish and halibut CDQ fisheries must not be reported on the CDQ catch report in 1998.

15. In § 679.40, existing paragraph (f) is removed and existing paragraph (g) is redesignated as a new paragraph (f).

16. In § 679.43, a new paragraph (p) is added to read as follows:

(p) Issuance of a non-transferable permit. A non-transferable permit will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license under the License Limitation program found at § 679.4(h). This non-transferable permit authorizes a person to conduct directed fishing for groundfish or directed fishing for crab species and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable permit expires upon the resolution of the appeal.

17. In § 679.50, the last sentence of paragraph (a) is revised and new paragraphs (c)(4), (d)(4), and (h)(1)(i)(d) are added as follows:

§ 679.50 Groundfish Observer Program (applicable through December 31, 1997).

(a) * * * Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(4) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in paragraphs (c)(1)(v)

and (c) (1) (vii) of this section.

* * * * *

(c) Observer requirements for vessels.

* * *

(4) Groundfish and halibut CDQ fisheries. Vessels harvesting groundfish or halibut CDQ must comply with the following minimum observer coverage requirements each day that the vessel harvests, transports, processes, delivers, or takes deliveries of groundfish or halibut CDQ or PSQ. No CDQ observer may be required to be on duty more than 12 hours in a 24-hour period, to sample more than 9 hours in a 24-hour period, or to sample more than 3 hauls in a 24-hour period on a vessel using trawl gear or a processor taking deliveries from vessels using trawl gear.

(i) Mothership or catcher/processor. A mothership or catcher/processor of any length must have at least two CDQ observers as described at paragraph (h) (1) (i) (D) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

(ii) Catcher vessel. A catcher vessel equal to or greater than 60 ft (18.3 m) LOA, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one lead CDQ observer as described at paragraph (h) (1) (i) (D) of this section aboard the vessel.

(d) Observer requirements for shoreside processors.

(4) Groundfish and halibut CDQ fisheries. Each shoreside processor required to have a federal processor permit under §

679.4(f) and taking deliveries of groundfish or halibut CDQ must have at least one lead CDQ observer as described at paragraph (h) (1) (i) (D) of this section present at all times while CDQ is being received or processed.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(D) For purposes of the groundfish and halibut CDQ fisheries a NMFS-certified CDQ observer must meet the following requirements.

(1) Be a prior observer who has completed at least 60 days of observer data collection on a vessel using the same gear type as the CDQ vessel that they will be deployed on.

(2) Complete at least 20 days of observer data collection on a vessel participating in a CDQ fishery in order to be certified as a "lead" CDQ observer.

(3) Receive the rating of 1 for "exceptional" or 2 for "meets expectations" by NMFS for their most recent deployment.

(4) Successfully complete a NMFS-approved CDQ observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(5) Comply with all of the other requirements of this section.

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jlepore, 6-25-96, 8-5-96, 8-6-96, 8-8-96, 8-9-96, 9-16-96,
10-4-96, 10-7-96, 10-29-96, 10-30-96, 11-1-96, 11-5-96, 11-25-96,
12-6-96, 12-18-96, 12-26-96, 12-30-96, 2-14-97, 4-2-97, 5-7-97,
5-16-97

(8-8-96, integrated preamble and regulatory text for CDQ from
dham and sbibb)

sbibb 9-11-96, 9-14-96, 10/4/96, 10/28/96, 11/5/96, 11/20/96,
11/21/96, 3/5/97, 3/11/97, 4/1/97, 4/28/97, 5/1/97, 5/14/97,
5/15/97, 5/19/97, 5/22/97(PRA)

dham 9/26/96, 10/17/96, 11/26/96, 3/12/97, 3/19/97, 4/29/97,
5/15/97

Received advance copy: SF3: 11/8/96

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Revised: Wbellows: 11/19/96

4/1/97 CDQ revisions returned to GCAK for review with copy to
Berg, Karp, Tromble, Auer, Meyer, Leedy.

4/2/97 LLP + CDQ revisions returned to Pollard and Auer

4/3/97 LLP + CDQ revisions (4/2/97 rev) copied to Sathre

5/1/97 CDQ rev. to Sathre, Auer

5/15/97 CDQ rev. to Sathre

5/19/97 CDQ rev. to Sathre, Auer

Proposed Regulations and Program Design for the The Multispecies Community Development Quota Program

Based on the LLP/CDQ Proposed Rule submitted to the Secretary of Commerce by the Council on June 9, 1997.

A. Council recommendation

7.5% of all BSAI groundfish TACs not already covered by a CDQ program, and a pro-rata share of PSC will be allocated to CDQ Communities as defined in the current CDQ program, with the addition of Akutan. PSC will be allocated "off the top" before the trawl/non-trawl split. The Groundfish CDQ program will be patterned after current CDQ program but will not contain a sunset provision. (Council newsletter, 6/28/95)

B. General Program Design

1. CDQ species would include all groundfish TAC species (including pollock and sablefish) and prohibited species (PSQ) in the Groundfish CDQ Program; halibut in the Halibut CDQ Program; and king and tanner crab in the Crab CDQ Program.
2. Individual CDQ groups would receive a percentage allocation of groundfish, prohibited species, halibut, and crab based on their Community Development Plan (CDP) proposals to the State and the State's recommendations to the Council and NMFS.
3. NMFS would monitor and enforce the groundfish and halibut CDQ programs and the State would monitor and enforce the crab CDQ program.

C. Transition to Multispecies CDQ Program

1. In 1998, the halibut, sablefish, and pollock CDQ fisheries would continue to operate under their current monitoring regulations. Bycatch in these fisheries would accrue to open access TACs and PSC limits.
2. In 1999, the monitoring regulations for the multispecies CDQ fisheries discussed below would apply to all groundfish and halibut CDQ fisheries.

D. Groundfish and Halibut CDQ Programs

1. CDQ groups would be prohibited from exceeding any groundfish CDQ, halibut CDQ, or halibut PSQ allocation. NMFS would not issue in-season closures or otherwise proscribe what actions must be taken to prevent exceeding CDQ and PSQ allocations.

2. Groundfish bycatch in the halibut CDQ fisheries would be required to be accounted for out of the CDQ group's groundfish allocations.
3. None of the groundfish catch or PSC bycatch from the groundfish CDQ fisheries would accrue to the non-CDQ fishery TACs or PSC limits.
4. Unused CDQ or PSQ from the CDQ fisheries would not be transferred back to the open access fisheries.

E. Gear or Use Restrictions in the Groundfish CDQ Program

1. Fixed gear sablefish and halibut CDQ must be harvested with fixed gear only.
2. All other groundfish CDQ reserves, including the 7.5 percent of the sablefish trawl allocation, could be harvested with any gear type.
3. PSQ would be required to be used as prohibited species bycatch to support groundfish CDQ fisheries.

F. CDQ Transferability Provisions

1. CDQ allocations (the percentage allocations) and CDQ (the specific amounts allocated each year) may be transferred by amendment to the CDP at any time during the year. Transfers of CDQ allocations are effective for the duration of the CDP's 3 year cycle. Transfers of CDQ are effective for the fishing year in which they are made.
2. PSQ may be transferred only during January and must be transferred with minimum amounts of CDQ.
3. All transfers must be approved by NMFS before the catch of the transferred fish is made.

G. Prohibited Species Catch Limits in the Groundfish CDQ Program

1. PSC limits for the open access fisheries would be reduced by the amounts allocated to CDPs.
2. Salmon, herring, and crab bycatch by fixed gear would not accrue to the CDQ groups' PSQ for these species. Halibut bycatch in pot and jig CDQ fisheries would not accrue to the PSQ as long as the gear types are exempted from halibut bycatch limits in the annual specifications.

3. The prohibited species catch CDQ reserves would include:

Red king crab in Zone 1:	15,000 crabs
Tanner crab in Zone 1:	75,000 crabs
Tanner crab in Zone 2:	225,000 crabs
Herring:	127.28 mt (based on 0.075% of 1996 limit)
Non-chinook salmon:	3,150 salmon
Chinook salmon:	3,600 salmon
Halibut:	350.6 mt of mortality

4. Attainment of the herring, salmon, and crab PSQs by a CDQ group would result in the same time and area closures required for the open access fisheries. CDQ groups would not be prohibited from exceeding these PSQ allocations, but would be required to stop trawling in certain times/areas once the PSQs are reached. Specifically, vessels fishing under a CDP would be prohibited from:

- (a) Continuing to use trawl gear to harvest groundfish CDQ in Zone 1 once the PSQs for red king crab or c. bairdi Tanner crab in Zone 1 are reached.
- (b) Continuing to use trawl gear to harvest groundfish CDQ in Zone 2 once the PSQ for c. bairdi Tanner crab in Zone 2 is reached.
- (c) Continuing to use trawl gear to harvest groundfish CDQ in Herring Savings Areas (HSA) once the herring PSQ is reached.
- (d) Continuing to use trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area between January 1 and April 15 once the chinook salmon PSQ is reached.
- (e) Continuing to use trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 once the non-chinook salmon PSQ has been reached.

5. The halibut PSQ would be treated the same as groundfish or halibut CDQ - the CDQ groups would be prohibited from exceeding their halibut PSQ.

H. CDQ Catch Monitoring Requirements

1. Table 1 summarizes proposed catch monitoring requirements.
2. CDQ observer: NMFS proposes to create a separate category of observers for the CDQ fisheries and require prior experience as an observer, minimum rating scores, and additional training.

3. CDQ observer coverage requirements, a minimum of:

1 CDQ observer on catcher vessels \geq 60 ft.
1 CDQ observer in each shoreside plant
2 CDQ observers on all processor vessels

4. Equipment requirements

Certified scale to weigh total catch on all trawl catcher/processors and motherships.

Observer sampling station, including a motion-compensated platform scale for weighing samples, on all catcher/processors and motherships.

Shoreside processors must sort and weigh by species and weigh on a scale certified by the State of Alaska. Observer must be able to monitor all sorting and weighing.

Vessel or plant inspection by NMFS required for processor vessels and processing plants. CDQ permit would not be issued until inspection is conducted and NMFS verifies that equipment requirements are met.

5. Minimum standards for CDQ catch accounting

Catcher vessels using trawl gear must retain all CDQ catch and herring and salmon PSQ and deliver it to a processor with a certified scale.

Observed: observer would estimate halibut and crab PSQ and it would be discarded at sea.

Unobserved: operator would report halibut and crab discards.

Catcher vessels using fixed gear

Observed vessels would do one of the following:

- (1) retain all CDQ catch and deliver it to a processor where it would be sorted and weighed (halibut PSQ discards would be estimated by observer), or
- (2) discard CDQ catch at sea if a CDQ observer samples each set for species

composition and average weight. Catcher vessels must provide same type of sampling station as required for catcher/processors if CDQ catch would be discarded at sea.

Unobserved vessels would be required to retain all CDQ catch and deliver it to the processor where it would be sorted and weighed. Vessel operator would report halibut PSQ discarded at sea.

Catch delivered to shoreside plants would be sorted, weighed, and reported on a ADF&G fish ticket.

Catch by trawl catcher/processors or unsorted catch delivered to motherships would be weighed on a certified scale (total catch weight), observers would sample each haul for species composition. Weight or numbers of CDQ/PSQ would be determined by applying observer's species composition to scale weight of total catch.

Catch by fixed gear catcher/processors would be determined by observer sampling of each set to determine species composition and average weight.

6. Information that must be approved in the CDP

- (a) List of eligible vessels and processors that would harvest or process CDQ/PSQ on behalf of the CDQ group.
- (b) Source of data and methods that would be used by CDQ group to determine CDQ/PSQ catch for all vessels/processors.
 - ▶ May use methods described above in (5)
 - ▶ CDQ group may propose alternatives such as sorting and weighing by species or larger sample sizes on processor vessels. NMFS would review proposed alternatives and, if accepted, approve them as part of the CDP. No alternatives to equipment requirements would be approved.
 - ▶ CDQ groups would be prohibited from using different data source or methods than those approved in the CDP.

7. Recordkeeping and reporting

The CDQ representative would be required to submit:

- ▶ CDQ check-in/check-out reports for all vessels participating in the CDQ fisheries.
- ▶ CDQ catch report each week.

Table 1. Summary of Proposed Monitoring Requirements for the Multispecies Groundfish/Halibut CDQ Program

Vessel/ Processor Type	Vessel Length/ Other Characteristics	Gear	CDQ Observer		Sampling Station	Certified Scale	CDQ Permit Ves/Plant Inspection	Catch that must be retained until weighed	Source of CDQ Catch Estimates			
			Lead	Other					CDQ	Sal/Her PSQ	Crab PSQ	Hal. PSQ
Catcher Vessels	60 ft.	Trawl	N	N	N	N	N	CDQ sal/her PSQ	LR	LR	LR	LR
	Unsorted codends	Trawl	N	N	N	N	N	CDQ, PSQ	Obs	Obs	Obs	Obs
	60 ft.	Non-Trawl	N	N	N	N	N	CDQ	LR	NA	NA	LR
Catcher Vessels OR	= 60 ft.	Trawl	Y	N	N	N	N	CDQ sal/her PSQ	LR (s) Obs (m)	LR (s) Obs (m)	Obs	Obs
	= 60 ft. retain all CDQ	Non-Trawl	Y	N	N	N	N	CDQ	LR	NA	NA	Obs
	= 60 ft. able to discard	Non-trawl	Y	N	Y	N	Y	Obs. samples	Obs	NA	NA	Obs
Catcher/ Processors and Motherships	all lengths	Trawl c/p all mships	Y	Y	Y	Y	Y	all CDQ PSQ	Obs	Obs	Obs	Obs
Catcher/ processors	all lengths	Non-trawl	Y	Y	Y	N	Y	Obs. samples	Obs	NA	NA	Obs
Shoreside Processors	NA	All gears	Y	N	N	Y	Y	All CDQ, PSQ delivered	LR	LR	LR	LR

Notes:

LR = Landings report from industry, such as ADF&G fish ticket, logbook, WPR, etc.

Obs = Data collected by CDQ observer.

NA = Does not accrue to PSQ allocation.

(s) = shoreside processor.

(m) = motherships.

U.S. MARINE CORPORATION

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June 19, 1997

Mr. Richard B. Lauber
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Mr. Lauber:

We are writing to provide comments for the June, 1997 meeting of the Council on agenda item C-7, "Groundfish and Crab Limited Entry/Moratorium". U.S. Marine owns and operates several vessels in the Alaskan groundfish fisheries and will be severely adversely affected by the Council's June 1995 decision on a license limitation program. U.S. Marine owned and intended to replace a moratorium-qualified trawler that was lost at sea. The June 1995 decision on replacement of lost vessels eliminated our right to replace the vessel. The decision was without notice and unfair and discriminated against U.S. Marine, a company with a strong history in the fishery.

I. Factual Background.

The OCEAN HOPE 2 was a 100' catcher vessel that began operations in the Gulf of Alaska in 1984 and the Bering Sea in 1985. It made landings in the Gulf of Alaska in 1984 and in the Bering Sea in 1989. It was lost at sea on March 3, 1989, and was reported to the Coast Guard on USCG form 2692. The company made plans to replace the lost vessel with the ONE OCEAN 2, a 100' trawler being made by Master Marine in Alabama. The vessel is a sister ship of the ONE OCEAN, a vessel currently operated in Alaska by U.S. Marine. However, action on a control date and a moratorium were pending at the Council and the company decided to wait until final action had been taken before completing the outfitting of the vessel as a trawler. Recently, the company decided to allow the vessel to undertake an experimental crab fishery in the Gulf of Mexico while awaiting Council and Commerce Department action on the moratorium and license limitation. The company was prepared to go forward with completion of the vessel when the Council unexpectedly cut off replacement rights for moratorium-qualified vessels that had not made a landing prior to June 17, 1995.

II. Council Actions.

The Council has considered a moratorium and other forms of entry limitation for several years. U.S. Marine has followed the Council's actions to ensure that its ability to replace the OCEAN HOPE 2 was not lost.

A. Control Date. In September, 1990, the Council published a control date of September 15, 1990 stating that any vessel entering the fishery after that date might

Mr. Richard B. Lauber
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not be allowed to participate under a future limited entry program. Since the Federal Register notice made no comment about replacement vessels for those lost at sea, U.S. Marine prudently decided to wait for further Council action. The notice stated that the Council intended to prevent speculative entry by fishermen who were not, and never had been, in the fishery. The company believed that provision would be made at some point for replacement vessels for those that had participated and been lost.

B. 1994 Moratorium. The Council made decisions on a moratorium in June 1992, August 1992, and January 1993. The Commerce Department published in the Federal Register proposed regulations on June 3, 1994. The proposed regulations included all vessels entering the fishery after January 1, 1980 up to February 9, 1992. The regulations allowed replacement of vessels lost after January 1, 1989, such as the OCEAN HOPE 2, so long as the vessel made a qualified landing within two years of the effective date of the regulations. The proposed regulations continued the company's rights to replace the OCEAN HOPE 2.

In August, 1994, the Commerce Department disapproved the moratorium, citing concerns with the early qualifying date of January 1, 1980 and with the liberal crossover provisions between the crab and groundfish fisheries. The Commerce Department made no comment on the replacement provision for lost vessels.

In its September and December 1994 meetings, the Council revised the moratorium proposal to shorten the qualifying period by beginning at January 1, 1988, and by limiting crossover eligibility. The Council did not change the replacement vessel requirements, thus allowing U.S. Marine to replace the OCEAN HOPE 2.

At the April 1995 meeting of the Council, the Council noted that it had sent the moratorium proposal forward to the Commerce Department for final action. Again, the Council continued to endorse the replacement vessel requirements that allowed the OCEAN HOPE 2 to be replaced at any time until two years following the moratorium effective date.

The Commerce Department approved the moratorium and published final regulations on August 10, 1995, including the same requirements for replacement of lost vessels.

C. License Limitation. The Council took action in 1995 on a license limitation program for the groundfish fisheries at its April and June meetings.

At the April 1995 meeting, the Council approved preferred alternatives for the program. The only alternative for a general license was January 1, 1988 through June 27, 1992 while two new alternatives were presented for an area qualification. The area qualification periods were January 1, 1998-December 31, 1994 and January 1, 1992-December 31, 1994.

The "Other Provisions" section included a statement that vessels which qualified for the license limitation program, but were lost, are still eligible. The statement did not distinguish between the general qualifying period and the area qualifying period.

The Council Newsletter of May 5, 1995 stated that the analysis of these new alternatives would not be available until early June, just before the Council meeting, and invited the public to comment based on the newsletter.

At the June meeting, the Council adopted the more restrictive area qualifying period of January 1, 1992-December 31, 1994. In addition, the Council added an entirely new provision under "Other Provisions" stating that a moratorium-qualified vessel must have been replaced and made a landing no later than June 17, 1995, the date of the Council meeting. This latter limitation was added with no notice to the public.

III. Comments of U.S. Marine.

A. Moratorium Actions. From June 1992 through April 1995, the Council consistently allowed the replacement of a vessel lost after January 1, 1989 subject to only two requirements. It must have made a qualified landing after January 1, 1988 and it must be replaced and make a landing two years of the effective date of the moratorium. Those requirements allow the OCEAN HOPE 2 to be replaced.

The company relied on the consistency of Council actions for almost three years, simply waiting for final Council action. The approved regulations will allow the vessel to be replaced now, but limit its operating life to whatever period of time is required to finalize the license limitation program. The moratorium provision is meaningless and undercuts our ability to make a rational business decision. No fishing company will expend the funds to complete a vessel to enter a fishery for a short period of time.

B. License Limitation Actions.

1. Notice. The Council consistently supported provisions that would allow us to replace our lost vessel, until the very last meeting in June 1995. Then, it approved a cut-off date of June 17, 1995 of our replacement right, with no notice. To the best of our knowledge, that provision was drafted and approved only at the June 1995 meeting itself. The May 5, 1995 Council Newsletter was the vehicle for obtaining public comment and it had only a vague sentence on replacement of lost vessels and no indication that moratorium-qualified lost vessels might be excluded. We received no notice of this possible action and relied on three years of consistent support by the Council.

2. Fairness. At the June 1995 meeting, the Council apparently also decided that a vessel that was qualified under the proposed license limitation scheme may be replaced at any time in the future with no limitation. Therefore, a vessel lost as early as January 1992 could be replaced at any time in the future.

Mr. Richard B. Lauber
June 19, 1997
Page 4

We see no justification for cutting off moratorium-qualified vessels but allowing unlimited replacement for license-qualified vessels. What is the basis for discriminating between those vessels?

3. Justification and Analysis. From June 1992 through April of 1995, the Council's analysis supported allowing replacement of any vessel lost after January 1, 1989. The Council limited the provision by requiring that the vessel had been replaced and a landing made within two years after the approval of the moratorium. That ensured that the replacement option was not open-ended. The same analysis convinced the Department of Commerce to approve the replacement provision in August 1995.

Suddenly, in June 1995, the Council apparently decided that an earlier cut-off of replacement vessels was required. We have seen no analysis to support that change. We cannot understand what analysis could have supported that change when the Commerce Department approved the original approach two months later.

U.S. Marine is a responsible and active company in the fishery. We are not speculators attempting to take advantage of a government regulation. The company has been in the groundfish business in Alaska since the early 1980's and continues to operate a small fleet of vessels in a responsible manner. The company followed the developments at the Council to assist in business planning. We believed that the Council had and would continue to support regulations that would allow us to replace our lost vessel. We simply wanted to wait for final action before expending additional funds. But we cannot make decisions and provide future input to the Council when events occur without advance warning. If we had known of a shift of views in the Council, we would have made our views known and argued for our approach. We had no real opportunity to do so.

We urge the Council to change those provisions and to allow any vessel lost after January 1, 1989 to qualify for a license based on its moratorium qualification. The license limitation program allows thousands of vessels to qualify. We believe that our situation is very limited and unusual and that a change could be made with little impact on the objectives of the program.

Sincerely,

Jonathan Spool
Vice President for Alaska
Operations U.S. Marine

**Bering Sea/
Aleutian Islands
Crab Fisheries Survey**

***License Limitation and
Buy Back Program***

**Prepared For:
North Pacific Fisheries
Management Council**

**Crab Reduction and
Buyback Group (C.R.A.B.)**

Prepared For:



Juneau, Alaska

June 1997

June, 1997

Rick Lauber, Chairman
605 West 4th Avenue, Suite 306
North Pacific Fisheries Management Council
Anchorage, AK. 99501-2252

At the request of the Capacity Reduction and Buyback (C.R.A.B.) Group the attached document (based upon the results of the Spring 1997 C.R.A.B. survey) has been produced by the McDowell Group for use by the North Pacific Fisheries Management Council.

Key survey findings include:

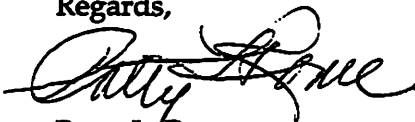
- Ninety percent (90%) of the fleet think that it is important to reduce the size of the fleet.
- The owners of about one-fourth (22%) of the existing permits are willing to consider selling in a buy-back program.
- Two-thirds of vessel owners interviewed are willing to pay for a buyback program through an annual assessment of gross stock.

Of those who would not be willing to pay an assessment, one of twelve are likely to sell their permits. Further, of this group, one-quarter indicate they were not active in the BS/AI fishery in recent years.

- The fleet's income dependence on the Bering Sea/Aleutian Island crab fisheries is high. In 1996 over 80% of the fleet earned income in the BS/AI crab fisheries. Most of them relied on the BS/AI fisheries for at least half of their income.
- Survey demographics show respondents were 38% Alaska vessel owners and 62% non-Alaska vessel owners. Cross referencing of all survey results (e.g. Alaska vs. non-Alaska vessel owners) can be provided upon request.
- Vessel registration data indicates that two-thirds of those who would receive permits under the License Limitation Plan (LLP) are current participants in the fishery. Survey results closely mirror this proportion with sixty-seven percent of respondents indicating they have participated in the BS/AI crab fisheries in recent years.

The McDowell Group extends a thank you to all vessel owners who participated in this project by completing surveys and to the C.R.A.B. Group for the opportunity to provide our professional services.

Regards,

A handwritten signature in cursive script, appearing to read "Patty L. Rome".

Patty L. Rome
Project Analyst and
Survey Manager

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Introduction and Methodology

Introduction

The Bering Sea tanner crab and Bristol Bay red king crab fisheries are suffering from severe resource depletion, low ex-vessel prices and excess harvest capacity. Under the proposed License Limitation Plan (LLP), an estimated 360 licenses will be issued for the Bristol Bay Red King Crab and Bering Sea Tanner Crab Fisheries. Current participation in these fisheries is about 230 vessels. The North Pacific Fisheries Management Council (NPFMC) and Secretary of Commerce have placed a moratorium on new participation in the fisheries to allow time for the council to initiate solutions to the problem of over-capacity.

The Magnuson-Stevens Act authorizes the U. S. Secretary of Commerce to assess the damage to fisheries due to the collapse of stocks or overcapitalization. The law also authorizes creating systems to remedy the problem. A permit buy-back program to reduce harvest participation is one prominent solution being considered. To study this option, the *Capacity Reduction And Buy-back* (C.R.A.B.) Group, comprised of vessel owners, has commissioned a McDowell Group survey of vessel owners. The key issue of the survey is determining the fleet's willingness to accept a buy-back self assessment as a long run investment in a stable, healthy fishery.

Following is a summary of the results of the C.R.A.B. Group survey conducted by the McDowell Group in the spring of 1997. All owners of vessels registered to fish Bristol Bay Red King Crab and Bering Sea Tanner Crab during the LLP qualifying period were mailed surveys and given the opportunity to participate. In nearly all cases the address of the most recent vessel owner was identified. A total of 63% of current permit holders responded to the survey (92 vessel owners holding 146 permits).

Methodology

All Bering Sea/Aleutian Island crab vessel owners as listed by the Alaska Commercial Fisheries Entry Commission were mailed a survey in April of 1997. A cover letter signed by the C.R.A.B. Group (with boat names and contact numbers for group members) was mailed along with the survey. In addition, a postage-paid envelope was provided. Surveys were returned directly to the McDowell Group. Confidentiality was stressed in the cover letter, survey introduction and reminder card sent to vessel owners. (Copies of the cover letter, survey and reminder card are provided in the Appendix portion of this report.)

Surveys were numbered prior to mail out and cross-referenced with permit holder name, vessel name and address. This numbering procedure and cross-reference methodology guaranteed that duplicate surveys did not enter the tally of responses. A listing of all surveys returned with invalid addresses was provided to the C.R.A.B. Group. In addition, vessel owners not responding were contacted by reminder card and telephone (when possible) encouraging participation in the survey.

Executive Summary

The Bering Sea/Aleutian Island crab fleet responding to the survey appears willing to participate in a buy-back program. Almost all respondents feel strongly about the need for reduced harvest effort and support a buy-back program. Further, they are willing to pay an assessment ranging from one to five percent to help finance such a program. Most are willing to pay at least two percent.

The respondents tend to have long histories of participation in the Bering Sea tanner and Bristol Bay red king crab fisheries with the majority of them participating since before 1985.

As a group, the BS/AI fleet is very economically dependent on these crab fisheries. Two-thirds of them get the majority their income and about four in ten have been almost completely dependent on Bering Sea/Aleutian Island (BS/AI) crab fisheries in recent years. Most of them participated in the crab fishery last year but participation dropped from over 80% earlier in the decade to about 70% in 1996.

The potential per vessel sale value of BS/AI crab permit packages in the event of a buy-back program varies widely. Of those who would consider selling, about one-fourth think they would sell for less than \$500,000, one in five owners estimate between \$500,000 and \$1,000,000, and 38% of this group think \$1,000,000 or more. About one fifth are undecided. More importantly, those who are more likely to sell value their permits lower than those determined to stay in these crab fisheries.

Most are not willing to consider leaving the BS/AI crab fishery, though about one in four said they are likely to sell in the event of a buy-back program. As a group, they are very aware of proposed solutions to their distressed fisheries.

Vessel Ownership

Most vessel owners participating in the Bering Sea/Aleutian Island crab fisheries own and operate just one vessel. Sixty-one percent of the respondents operated one vessel in the crab fisheries, while 20% operated two vessels, 12%, three vessels and 3%, four or more vessels.

Of those likely to sell their permits, 79% own one vessel. Another 8% of those who would sell do not own nor do they have a vessel to operate in the BS/AI fishery.

History of Participation

Two-thirds of those surveyed have a long history of participation (dating prior to 1985) in these crab fisheries. More than four out of five began participating before 1990 while just 16% started after 1990. Only two percent have entered since 1993.

Use of Vessels

Almost all (94%) of the vessels owned by respondents are used exclusively as catcher vessels. Only one in nine (11%) of vessels owned combine catching and processing functions. *(Multiple responses tallied, e.g. one owner providing usage information for two or more vessels owned).*

Vessel Size

The predominant vessel size used in the BS/AI crab fisheries is between 90 and 125 feet in length (LOA). Seventy-three percent of owners report vessels in this size category. One-fourth of vessel owners own vessels longer than 125 feet while one of five own vessels less than 90 feet in length. *(Multiple responses tallied, e.g. one owner providing vessel length information for two or more vessels owned).*

Bering Sea Tanner Crab Participation

Over half (55%) of the vessel owners participated in the Bering Sea tanner crab fishery prior to 1985. Participation in this fishery peaked between 1991 and 1994 when over 80% of the respondents were active. By 1997, participation had dropped to 70%, with nearly a third of those responding choosing not to participate.

Bristol Bay King Crab Participation

The Bristol Bay red king crab fishery has a longer history of participation by these respondents. Two-thirds participated prior to 1985. However, the recent pattern of participation is similar to that of the Bering Sea tanner crab fishery. Participation in the king crab fishery peaked at 82% in 1992 and dropped to 72% by last year, 1996.

Note: Vessel registration data indicates that two-thirds of those who would receive permits under the License Limitation Plan (LLP) are current participants in the fishery. This same proportion of participants is closely mirrored in survey results which indicate sixty-seven percent of respondents participated in the BS/AI crab fisheries in recent years and one-third have not.

Reasons for Not Participating in Recent Years

One-third of the fleet gave specific reasons for not participating in recent years. Chief among them was focusing on other fisheries perhaps providing for greater income, which 18% of them chose to do. Of those who did not participate, a surprising – or perhaps not so surprising – 9% (one of eleven) state they did not fish because their vessels were damaged or lost or that gear had been lost or stolen. A sizable number of this group indicated they expected to resume fishing crab when they once again have access to vessels or gear. Four percent did not participate in recent years due to financial reasons.

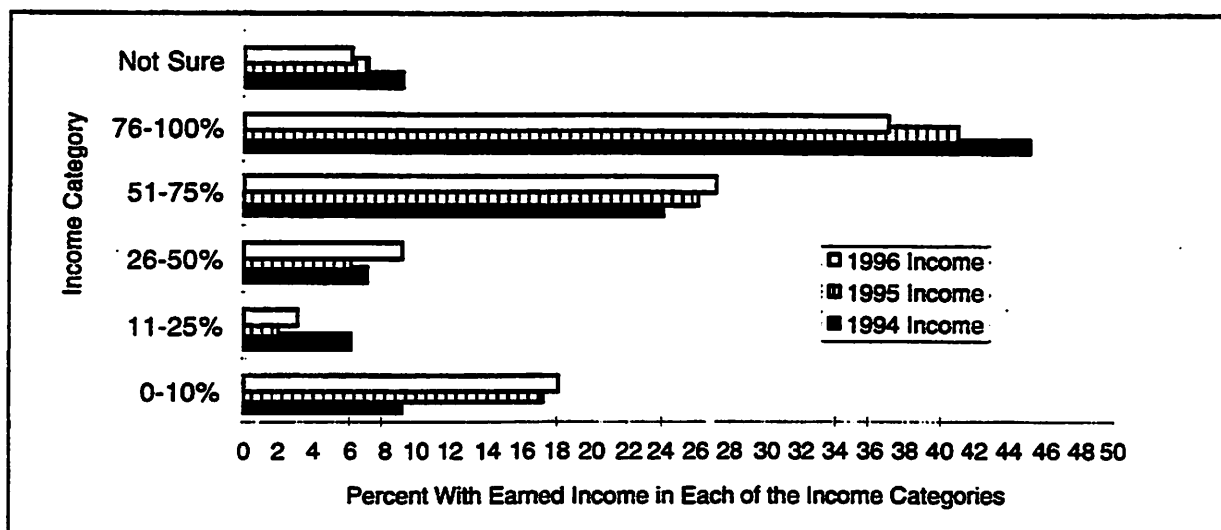
Income Dependence

The fleet's income dependence on the Bering Sea/Aleutian Island crab fisheries is high. In 1996 over 80% of the fleet earned income in the BS/AI crab fisheries.

A significant portion of the fleet depends almost entirely on these fisheries. Between 37% (1996) and 45% (1994) of those surveyed indicate they depend on the BS/AI crab fisheries for three-fourths or more of their total income. In 1994 through 1996 two-thirds of the fleet (64% to 69%, depending on the year) received more than 50% of their income from these crab fisheries.

In 1996, only one-fifth of the fleet reported income dependence of less than 25% on these crab fisheries.

Percent of Total Income Earned in the BS/AI Fisheries 1994 through 1996



Note: Those who responded to the survey and were not participants in the 1996 BS/AI fisheries are included in the 0 - 10% category.

Sources Used for Industry Information

Bering Sea/Aleutian Island crab vessel owners use a variety of information sources to stay informed about their industry. Trade associations and fishing magazines topped the list, used by at least 70% and 64% respectively. The NPFMC newsletter provided important information for half the fleet, followed information obtained from crab buyers and then the informal grapevine of friends and family. News media sources such as television, radio or newspapers were relied upon by only one fifth of the fleet.

Awareness of BS/AI Crab Fisheries and Groundfish Limited Entry Program Proposals

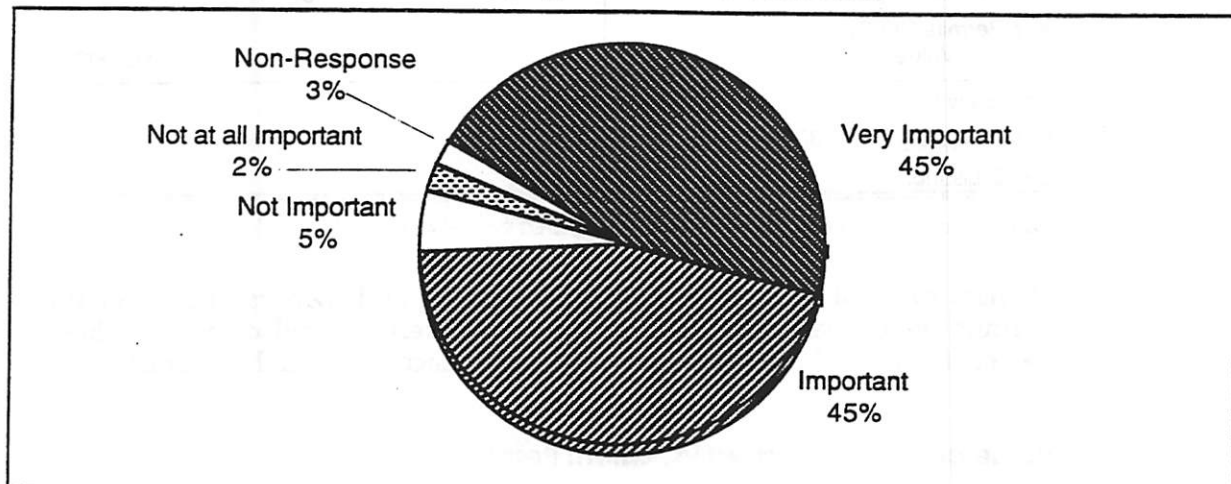
Virtually the entire fleet is aware of the proposals to limit entry into the Bering Sea/Aleutian Island crab fisheries. The entire fleet is also aware of whether their vessel will qualify under the crab proposal. Ninety-four percent say their vessel will qualify.

Among the crab fleet there is less awareness of whether they will qualify for groundfish limited entry. Seventy-two percent think their vessel will qualify but a significant 22% is "not sure".

Perceived Importance of Reducing the Size of the Crab Fleet

There is nearly universal consensus that the fleet needs to be reduced. Ninety percent think it is at least "important" while nearly half (45%) consider it "very important." The few respondents who consider it "not important" tend to be those who are less economically dependent on these crab fisheries.

Importance of Reducing the Current Crab Fleet



Arguments favoring a smaller fleet focus primarily on concern for the resource and management of the resource followed by economic points such as "current overcapitalization" and the need for "reasonable income for those remaining in the fisheries".

Arguments against the importance of reducing the fleet size tended to be philosophic ones. "Survival of the fittest," and "things will take care of themselves," were examples.

Likelihood of Selling Permits in a Buy-back Program

The owners of about one-fourth (22%) of the existing permits were willing to consider selling in a buy-back situation. Of these, owners of six percent (6%) of the permits said they are "very likely" and those owning another 16% of permits said they are "likely." Owners likely to sell – and especially those "very likely" to sell – tended to be those less economically dependent on the fisheries.

The following table has been designed by applying survey results (likelihood of selling and value of permit) to the current listing of vessel owners provided by State of Alaska Commercial Fisheries Entry Commission. The table provides estimates indicating 51 permits may be willing to participate in the buyback program. Cost of buyback program could range between \$35 to \$50 million (or more) depending on those vessel owners valuing their permits over one million dollars and also those who are not sure what value they would place on their permits.

Likelihood to Sell Permit	Number of Permits*	Buyback at 250K - 500K (Cost of buyback could be estimated at:)	Buyback at 500K to 1 mil.	Over 1 million
% of those likely/very likely to sell		31%	22%	29%
Very likely to sell (6%)	14	\$1,000,000 to \$2,000,000	\$5,500,000 to \$11,000,000	at least \$4,000,000
Number of permits		4	11	4
Likely to sell (16%)	37	2,750,000 to 5,500,000	4,000,000 to 8,000,000	at least 11,000,000
Number of permits		11	8	11
# of Permits Not Sure of Value (16%)	8			(est) 8,000,000
Not Likely to sell 45%	104			
Not at all likely to sell 30%	70			
CFEC Listing:	233 Permits			

*Based upon 1997 Bristol Bay tanner crab vessel listing CFEC State of Alaska.

Owners of most permits are not likely to sell and owners of 30% of the permits were adamantly in the "not at all likely" to sell category. These owners tended to have high economic dependence on the crab fisheries.

Value of Recently Fished vs. Latent Permits

Owners had mixed views when asked, "Should permits that have been recently fished be valued higher than those permits which have not been used (recently)?"

Just over half (52%) agreed to higher value for active permits but nearly a third disagreed and 17% were undecided. Of those indicating permits should all be valued equal whether fished or not in recent years, 32% are likely to sell their permits.

Perception of Permit Value

Vessel owners were asked, "If you were interested in selling your permit(s), what would be a fair price for your complete package of Bering Sea/Aleutian Island crab license limitation permit(s) for each vessel?"

Opinions varied widely with permit values ranging from less than \$100,000 to over \$1,000,000. However, the largest group (38%) felt their permit packages were worth at least \$1,000,000. Another one in five (19%) placed the value at between \$500,000 and \$1,000,000. Nearly as many (17%) said between \$200,000 and \$500,000 with 6% valuing their permit packages at less than \$200,000. About one in five owners were "unsure" and did not name an amount.

At least 40% of the following groups feel their permits should be valued at \$1,000,000 or more:

- owners of single vessels,
- those with a high economic dependence on the BS/AI fisheries,
- those who are unlikely to sell in a buy-back,
- those who are willing to pay at least 3% to contribute to a buy-back fund,
- and non-Alaskans.

On the other hand, those valuing permits lower than one million dollars tended to:

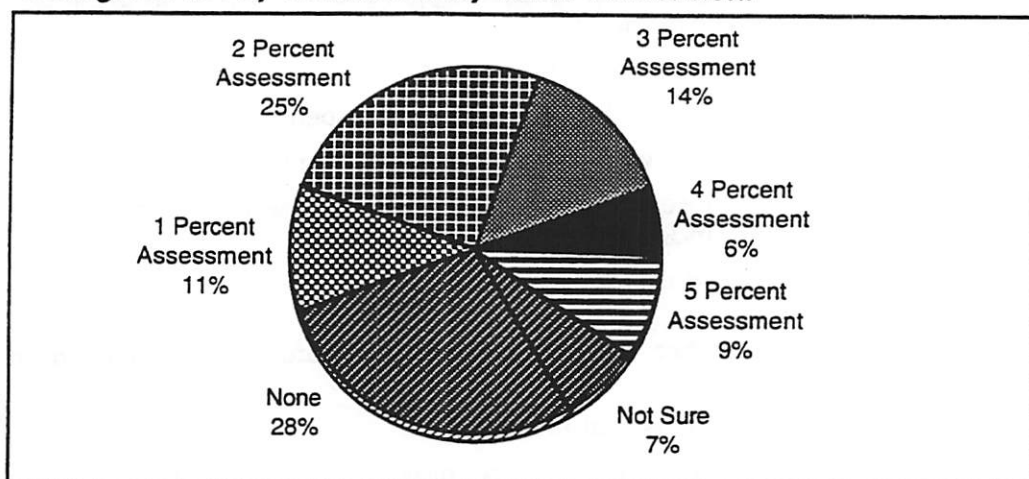
- owners multiple vessels,
- those with a low economic dependence on the BS/AI fisheries,
- those who are likely to sell in a buy-back,
- those who are willing to pay one to two percent to a buy-back fund,
- and Alaskans(76% valued their permits under \$1 million).

Willingness to Pay an Annual Buy-back Assessment

Most of the fleet is willing to pay to support a buy-back program. They are willing to support their views with their money. Two-thirds (65%) were willing to pay between 1% and 5% of their gross crab fishery income to help fund the industry share of a buy-back program.

Those willing to pay a buy-back assessment are also willing to pay more than a token amount. Over half the fleet was willing to pay at least 2% of their gross crab income with only 11% saying they'd pay just 1%. The most common response was 2%, with one-fourth of all respondents stating that percentage.

Willingness to Pay an Annual Buy-back Assessment



Twenty-eight percent were not willing to pay and seven percent were "unsure" of their willingness to pay. Of those who would not be willing to pay an assessment, one of twelve are likely to sell their permits. Further, of this group, one-quarter indicate they were not active in the BS/AI fishery in recent years.

Alaskans were moderately more likely to be willing to pay an assessment and pay a higher percentage than non-Alaskans. Owners likely to sell and those who do not think smaller fleet size is important were less willing to pay.

Cover Letter

Survey Instrument and Results

Reminder Card

April 10, 1997

Dear Fellow Vessel Owner:

As many of us are aware, the Bering Sea and Aleutian Islands crab fisheries could now be categorized as "overcapitalized or depressed" due to the low abundance of stocks, low ex-vessel prices occasioned by poor market conditions, and the large number of participants in these fisheries. Most of us saw revenues decline in 1996, to one-half of the five year average. One remedy for this situation was proposed by the United Fishermen's Marketing Association of Kodiak, several years ago. This was the idea of a buy back program for crab fishery permits. This proved to be an idea ahead of its time, as no basis in law for such a program in the BSAI crab fisheries could be found. The Magnuson-Stevens Fishery Conservation Management Act, however, contains explicit authorization for fishing capacity reduction programs, including the possibilities of Federal funding and a mechanism for industry self funding through an assessment of up to 5% (or less) of vessel revenue.

This opportunity has occasioned a fresh look at the possibility of such a program for the crab fisheries in the BSAI. Such a program could provide a fair solution to the problem of overcapitalization for both those choosing to sell permits, and those choosing to keep them. A buy back program could reduce the number of permits to be issued under the pending License Limitation Plan, which has been authorized by the North Pacific Fisheries Management Council, by at least a hundred or more. A buy back program could allow a vessel owner to sell crab permits for immediate financial gain, or to keep these permits. A properly structured buy back could allow increased returns to those choosing to remain in the fisheries because the number of vessels remaining would be reduced. A properly structured buy back could amortize the cost of reducing the number of permits in fisheries over a long enough time period that the burden of retiring those permits could be borne by those choosing to remain. Finally, a buy back program could provide the stability necessary to allow long-term management perspectives to bear fruit - enhancing the ability of new participants coming up through the fishery to find financing for crab fishing operations, and providing for the orderly transfer of participation in healthy fisheries to the next generation.

The interest generated by this fresh look at a buy back program has resulted in the creation of an Alaska Non-Profit Corporation, the Capacity Reduction And Buyback (or CRAB) group. This is an organization of crab vessel owners; our workgroup and our officers are also vessel owners. The sole purpose of our group is to create a program that will generate benefit to all of the vessels that will be licensed under the License Limitation Plan. If you are interested in being a part of our industry group and in helping to develop solutions to our industry's problem of overcapitalization, please contact one of the members of the workgroup listed below.

In order to estimate the support such a program might have among vessel owners, to gauge the numbers of those willing to sell or to hold permits in a buy back, and to help to structure such a program, we would appreciate you taking a few minutes to complete the survey (attached) and to mail or FAX it back to the McDowell Group, in Juneau. This independent consulting and research firm is well-respected for their ability to manage surveys confidentially and competently. The McDowell Group will tally the results of the survey and report (in grand totals only, and without individual responses identified to the respondents) to the Capacity Reduction And Buyback Group.

Sincerely,



Gordon Blue
Workgroup Coordinator
FV Ocean Cape
(907) 747-7967

Workgroup Members:

Bill Jacobson	FV Silver Spray	(907) 486-4552
Spike Jones	FV Guardian	(541) 563-4321
Richard Powell	FV Patricia Lee	(907) 486-4250
David Wilson	FV Destination	(907) 383-3755

**Bering Sea/Aleutian Islands
Crab Fisheries Survey For:
North Pacific Fishing Management Council
License Limitation and Buy Back Program**

Please take a moment to read the cover letter attached to this survey. The information requested will be handled as CONFIDENTIAL and will be reported in group totals only. No individual responses will be reported. Once you have completed the survey, please return it in the envelope provided. If you wish, you may FAX your survey back to the McDowell Group at (907) 586-2673. The McDowell Group is an independent Alaska research firm which has conducted numerous fishing industry reports for both government and private industry.

This survey is being used solely to gather opinions on important issues affecting your industry. Any referendum or ballot will be mailed separately.
If you have questions regarding content or purpose of the survey, please direct inquiries to: Gordon Blue at (907) 747-7967.

General Information:

1. How many vessels do you operate in the Bering Sea/Aleutian Islands crab fisheries?

One	61 %
Two	20
Three	12
Four or more	3
NONE	3 (See question #7)

(Please read remainder of survey and answer any questions that apply.)

2. How long have you been a crab vessel owner in the Bering Sea/Aleutian Islands crab fisheries?

Prior to 1985	65 %	Since 1990	5 %
Since 1986	5	Since 1991	5
Since 1987	4	Since 1992	4
Since 1988	5	Since 1993	1
Since 1989	4	Since 1994	1

3. How are your vessels used, are they used as catcher vessels or catcher processor vessels? (Please indicate number of vessels in each classification.)

Catcher Vessel(s)	94 %	Catcher/Processor Vessel(s)	11 %
One	62 %	One	90 %
Two	26	Two	10
Three	7	Three	0
Four or more	2	Four or more	0

(Multiple responses tallied, e.g. one owner providing usage information for two or more vessels owned)

4. What is your vessel length(s) (LOA)?

(If you have more than one vessel, please indicate the number of vessels following your response below.)

91 to less than 126 feet	73 %
Less than 90 feet	20
126 feet and over	27
No longer own a vessel	1

(Multiple responses tallied, e.g. one owner providing length information for two or more vessels owned)

5. In which years did you participate in the Bering Sea Tanner Crab fisheries?

(please check all that apply)

Prior to 1985	55 %	1992	80 %
1986	55	1993	83
1987	61	1994	84
1988	70	1995	77
1989	67	1996	79
1990	76	1997	70
1991	79		

6. In which years did you participate in the Bristol Bay King Crab fishery?

(please check all that apply)

Prior to 1985	65 %	1990	79 %
1986	57	1991	82
1987	65	1992	82
1988	71	1993	80
1989	70	1996	72

7. If you have not participated in the Bering Sea/Aleutian Islands crab fisheries in recent years, please briefly explain why, or check the appropriate response below.

Non-response (fished)	67 %	Sold Vessel(s)	2 %
Other Fisheries	18	Financial Reasons	4
Vessel Lost or Damaged	9	Other reason:	1

8. What source of information do you use most often to learn about changes in the industry, laws or regulations that may effect you and your vessel(s)?

Trade Association(s)	70 %	Friends/Family	34 %
Fishing Magazines	64	Television/Radio	21
NPFMC Newsletters	50	Newspaper	21
Crab Buyers	38	Other sources:	16

9. What percent of your 1994 income was earned from Bering Sea/Aleutian Islands (BS/AI) Crab fisheries?

0 to 10%	9 %	51% to 75%	24 %
11% to 25%	6	76% to 100%	45
26% to 50%	7	Not Sure/Refused	9

10. What percent of your 1995 income was earned from BS/AI Crab fisheries?

0 to 10%	17 %	51% to 75%	26 %
11% to 25%	2	76% to 100%	41
26% to 50%	6	Not Sure/Refused	7

11. What percent of your 1996 income was earned from BS/AI Crab fisheries?

0 to 10%	18 %	51% to 75%	27 %
11% to 25%	3	76% to 100%	37
26% to 50%	9	Not Sure/Refused	6

Issues and Opinions

The proposed buy back program could reduce the number of permits by at least 100 or more, it could increase profits and crab harvest for those who do not opt for a buy back of their permit(s).

12. Are you aware of the limited entry program for King and Tanner crab fisheries?

Yes	89 %	No	2 %	Not Sure	9 %
-----	------	----	-----	----------	-----

13. Will your vessel qualify under the limited entry program for BS/AI crab?

Yes	94 %	No	1 %	Not Sure	6 %
-----	------	----	-----	----------	-----

14. Will your vessel qualify under the limited entry program for BS/AI groundfish?

Yes	72 %	No	6 %	Not Sure	22 %
-----	------	----	-----	----------	------

15. How important do you feel it is to reduce the size of the crab fleet?

Very Important	45 %
Important	45
Not Important	5
Not at all Important	2
Non response	3

16. How likely are you to sell your permits(s) if a buy back program were offered?

Very Likely	6 %	Not Likely	45 %
Likely	16	Not at all Likely	40
Not sure / non-response	3		

Note: (totals add up to larger than 100% due to multiple vessel owners who may sell one or more permits or may keep one or more permits).

17. In your opinion, should permits that have been recently fished be valued higher than those permits which have not been used?

Yes, recently used permits should be valued higher than those not used in past years.

52%

No, all permits should be valued equally whether they have been used recently or not.

31%

Don't Know / Not Sure

17%

18. If you were interested in selling your permit(s), what would be a fair price for your complete package of BSAI Crab License Limitation Permit(s) for each vessel?

\$0,000-99,000	1 %	\$600,000-699,000	1 %
\$100,000-199,000	5	\$700,000-799,000	7
\$200,00-299,000	9	\$800,000-899,000	1
\$300,000-399,000	4	\$900,000-999,000	1
\$400,000-499,000	4	\$1,000,000 or over	38 %
\$500,00-599,000	9	Unsure	20

19. What percent of your crab fisheries gross stock would you be willing to pay for an annual assessment to help fund the industry share of the buy back program?

65% of vessel owners would pay 1% to 5% annual assessment.

One percent	11 %	Four percent	6 %
Two percent	25	Five percent	9
Three percent	14	None	28
		Not Sure	7

**Thank you for participating in this
important project.**

**Please FAX or mail your survey in the envelope provided
to the McDowell Group by April 30.**

McDowell Group, Inc.

416 Harris St., Suite #301

P. O. Box 21009

Juneau, Alaska 99801

Attn: Patty Rome, Survey Manager

Phone (907) 586-6133

FAX (907) 586-2673

Change of Address Notification

If your address has changed, please enter your correct address below.

Phone: _____

FAX: _____

Reminder Card

The following reminder card was sent to all vessel owners who had not responded to the survey during the first two weeks of fielding.



P. O. Box 21009
Juneau, Alaska 99802
Phone (907) 586-6126
FAX (907) 586-2673

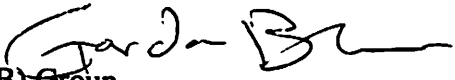
**** Reminder ****

We have not received your
CONFIDENTIAL Bering Sea/Aleutian
Islands Crab Industry Survey.

If you have not completed the Bering Sea/Aleutian Islands Crab Industry Survey mailed to you earlier this month, please take a few minutes to do so. The information gathered from the survey will be tallied by the McDowell Group, an independent research and consulting firm. **All individual responses will be kept strictly CONFIDENTIAL. Only McDowell Group personnel will see the individual surveys and all results will be reported as group totals only.** Please mail the survey back to the above address or you may FAX to (907) 586-2673. Please contact Patty Rome, Survey Manager at the McDowell Group (907) 586-6126 (collect) if you need a replacement survey or if you have any questions about survey confidentiality or reporting of survey results.

Thank you for participating in this important project.

TO: Mr. Richard Lauber, Chairman
North Pacific Fisheries Management Council

FROM: Gordon Blue, Workgroup Coordinator 
Capacity Reduction and Buyback (CRAB) Group

DATE: June 18, 1997

SUBJECT: Agenda Item C-7, LLP - Comments for Proposed Rule
Agenda Item C-7(d) Crab Buyback Program Report

RE: I. STATUS REPORT ON CRAB BUYBACK PROGRAM
II. LLP ALLOWANCE FOR SEVERABILITY OF CRAB (OR GROUND FISH)
SPECIES LICENSES FOR THE SOLE PURPOSE OF RETIREMENT OF A
QUALIFIED BUYBACK PROGRAM. *IN*

Dear Mr. Chairman:

The CRAB Group has completed the initial phase of its operations. To date we have:

- Formed an Alaska Non-profit Corporation and recruited an acting board of directors who are all owners of LLP qualified crab vessels with years of experience, and in combination have experienced all aspects of our industry: catchers; catcher/processors; buyer/processors; vessels lost, wrecked, sunk, sold, and transferred to foreign flag; vessels which are current participants in the fisheries; and vessels which qualify under LLP but are not currently participating in one or more of these fisheries. Our acting board members are: David Wilson of Sand Point, Alaska; Richard Powell and Jeff Steele of Kodiak, Alaska; Frank Danner of Anchorage, Alaska; Gordon Blue of Sitka, Alaska; Rick Hastings of Lynnwood, Washington and Spike Jones of Seal Rock, Oregon.
- Compiled the nucleus of a bibliography and a library of the literature on the subject of buyback programs.
- Compiled a database of current ownership of vessels from Alaska Commercial Fisheries Entry Commission records. These public records contain no information about landings. This database is composed of all those vessels which registered to fish for King Crab in the Bristol Bay area, or Tanner Crab in the Bering Sea (the "buyback fisheries") both during the LLP Endorsement Qualifying Period (EQP) (1991 Bristol Bay king crab through 1994 Bering Sea tanner crab) and subsequently, in 1995, 1996 and 1997. This vessel registration list is larger than, and completely contains, the class of vessels which will qualify for LLP crab permits. For purposes of this discussion, and in all the appended reports, the term "recent participation" indicates at least one registration of the vessel for a buyback fishery since the end of the EQP.
- Determined the most recent owners of record for these vessels, as well as the most recent owner addresses, vessel names, flags and activities for most of them.
- Used the database to analyze the participation patterns of vessels in the period comprising the EQP and afterward. This draft data, with the caveats described below, is included for the perusal of members of the Council.

- Contracted with the McDowell Group of Juneau to conduct a survey by mail of all owners of those vessels in the database. Results of this survey are included in the attached report.
- Prepared an analysis of the legislative basis for an industry-funded buyback as authorized in the Magnuson-Stevens act. The results of this study are attached.
- Used industry knowledge, based on interviews and other sources to update information in the data base concerning the ownership entities of the vessels.
- Conducted two public meetings, with Lance Simmens from the Washington, D.C., NOAA Office of Sustainable Development, one in Seattle and one in Kodiak. Those attending the meetings included interested vessel owners, NMFS officials, staff for Sen. Gorton of Washington, Washington State NPFMC Members, accountants, a shipyard operator and representatives of crab industry groups.
- Met with NPFMC Members; Officials of ADF&G and WD of F; members of the Alaska Board of Fish; the Alaska State Legislature; the Alaska Delegation to the US House and Senate; officials of NMFS, including management and finance; NOAA Office of Sustainable Development officials John Bullard and Lance Simmens; and many others. In addition we have contacted and will be following up with Sen Patty Murray's office, and representatives of Governor Knowles of Alaska and Governor Locke of Washington and others. We expect to continue building this network of contacts. In all cases we have had positive meetings with the emphasis being the exchange of information and the gathering of ideas.

The next phase of our activities will be to continue our research and industry discussions to formulate a draft plan for buyback of licenses from the two most intensely capitalized fisheries: the Bristol Bay king crab and Bering Sea tanner crab fisheries. This draft plan will be available for the NPFMC to review at the September meeting. It will be for an industry-funded buyback, and when finalized, will necessitate a referendum vote of the crab fleet, and require a 2/3 supermajority for passage. Other elements which are expected to characterize this plan follow.

1. The License Limitation Plan is an essential step toward bringing overcapitalization of Bering Sea crab fisheries under control.

The LLP program establishes an upper limit to the number of vessels that may fish in the crab fisheries of the Bering Sea and Aleutians. Since 1994, the influx of new effort has been minimal due to three factors: the depressed economic state of the fisheries; the perception of a pending limited entry program whose qualifying period has passed; the existence of the moratorium on entry of new vessels into the fisheries, which will expire at the end of 1998.

2. A reduction in the number of vessels in the present fleet is a necessity.

The overcapitalization of the crab fleet has created economic hardship among present participants, and has made some fisheries unmanageable and it threatens the sustainability of the resources. Many crab stocks are at low and depressed levels and rebuilding programs are being attempted. Average income in 1996 was approximately one half of the average income for the previous five years and the 1997 Opilio Crab season produced yet lower revenues for the fleet. It is possible that one or more of the regularly scheduled seasons (especially Bairdi Tanner Crab) will not open this fall. The 1996 Bristol Bay King Crab season had a guideline harvest of 5 Million lbs. and

took 8 Million lbs. in a 96 hour opening. These stocks are at low or depressed levels and managers for the Department of Fish and Game have testified that the fishery is unmanageable using present tools. A special August session of the Board of Fish is scheduled to try to find a solution to this problem.

In the article, **Marine Fisheries at a Critical Juncture**, published in *Fisheries*, Vol. 18, No. 10, October, 1993, Michael Sissenwine, NMFS Chief Scientist, and Andrew Rosenberg describe, the cycle of overcapitalization and overuse quite well: "Open access fisheries inevitably become overcapitalized, as exemplified by more vessels "racing" to catch fewer fish. As a result, the fishing industry operates on the economic margin, meaning many participants cannot afford to reduce their catch, even in the short term. But short-term reductions will be necessary at some point, either as a result of natural variability in fish populations or if the fishery overshoots the sustainable yield. The latter may reflect uncertain scientific information, which also makes it more difficult for fisheries managers to reverse overutilization. Uncertain scientific information allows an economically stressed fishing industry to argue against reducing the catch on the grounds that the fishery resource may not actually be in jeopardy (i.e., they argue for the upper bound of confidence intervals). ... Under pressure from the fishing industry, in the face of uncertain scientific information, risk-prone fisheries management decisions have been the norm. The cycle is repeated. On average, risk-prone decisions are followed by further resource declines, more economic stress, more pressure not to reduce catches, and ultimately severe biological, economic, and social consequences (i.e., 'all doubt will be removed')." (p. 11)

This situation is recognized by the owners of Bering Sea Crab vessels: **90% of those responding to our survey said that it was "important" (45%) or "very important" (45%) to reduce the size of the fleet.**

3. The LLP, in and of itself, will not reduce the fleet to a level that will insure future sustainability of the resource.

There were 233 participants in the 1997 Opilio Tanner crab fishery, and 199 in the 1996 Bristol Bay king crab fishery. We estimate 360 vessels will receive licenses in the Bristol Bay king crab and Bering Sea tanner crab fisheries combined. This means that approximately 1/3 of the permits issued under the LLP are considered "latent" in the current vernacular. While this latency is to the benefit of the present participants in the fisheries, the experience of limited entry programs in general is that, over time, the number of active permits becomes equal to the maximum number of permits issued. This is a necessary consequence of the need to show return to capital invested in permit transfers.

4. The buyback program must be affordable.

Our survey indicates that many of the prospective holders of LLP permits would place a high value on those permits. It is observed that an unsolicited query about value will normally elicit a high-end response, while the serious contemplation of actual (though limited) cash in the prospect of uncertain future returns will have a different effect. The literature references a variety of

devices which have succeeded in minimizing the purchase of "blue sky."

When LLP comes into effect, additional withdrawals from stocks will be consequent. The permit fee system authorizes an assessment of 2%, while the CDQ program will ramp up from 3.5% to 7.5% in only three years. It is essential to the survival of the fleet that the buyout program reduces effort quickly, to the extent necessary to pay for these programs, as well as the carrying cost of the buyout. If the cost of the buyout is 2%, then the total cost of these programs is 11.5%, and a reduction equivalent to 27 average current participants will be necessary simply to stay even. Without a buyback program, new costs will have the effect of increasing the fleet size by 25 average participants.

Revenues available to pay for this program will derive from assessment of gross fishing revenues. For instance, if the average fleet wide annual revenue produced by these two fisheries is \$160Million, an assessment of 2% of these revenues (the enabling legislation says the assessment is "not to exceed 5%"), or \$3.2Million annually, and a loan of \$40Million bearing 7% interest will amortize in 30 years. If the total program costs exceed this amount, there will be a need for additional funding.

Without the benefit of a plan to respond to, 65% of the vessel owners surveyed said they would pay from 1 to 5% of their "crab fisheries gross stock" and 54% said they would pay two or more percent.

5. The buyback program will not be "monopolistic", and it will not eliminate competition.

Interviews of vessel owners, survey respondents and non-respondents alike, indicate that a consensus for desirable fleet size in the vicinity of 180 to 200 active vessels. Those vessels that remain will continue to belong to fishermen who will continue to compete for the resource, and will continue to devise new methods and efficiencies. NMFS and ADF&G will continue to have to manage the fleet, shipyards will stay in business and communities will benefit from vessel support activities.

A fleet of this size (or even smaller) will be able to harvest any level of GHJ which has been experienced. The experience of this fleet is that overcapitalization aggravates the process of determination of price. A decade ago, a fleet of 120 vessels produced 100M lb. of *Opilio* crab for .50/lb without a quibble.

6. A key factor in the development of the buyback plan will involve the treatment of "latent" permits.

The most important motivation for an industry-funded buyback is that permit holders become invested in the success of their program through the cash which they have invested, through self-assessed. It is patently a non-starter if 2/3 of permit holders fish, and pay for the program with an assessment, while 1/3 get a free ride, through not participating in the fishery. Similarly, any plan that results in the re-activation of "latent" permits without a corresponding reduction of current effort, whether by accident or design, will not succeed. Although several ideas have arisen to deal

discussion. This aspect promises tough negotiating sessions, however the advent of the direct referendum to the fleet will help to prevent unreasonable positions from prevailing in the process.

7. The buyback plan will seek to use programs which have contributed to overcapitalization in new ways, calculated to reduce overcapitalization.

The first means of accomplishing this is presented by the use of the Federal Obligation Guarantee (FOG) program to fund the program up front. This allows immediate buyback of licenses and amortization of the debt, and was an early factor in the concept of the industry-funded buyback.

The Capital Construction Fund program (CCF) has been under increasing attack in recent years, from the IRS and from supporters of such bills as "The Anti Corporate Welfare Act." NMFS program administrators have begun to refuse holders of large funds the privilege of a "rollover" or renewal, of program objectives for additional time. These fund holders are now being told to either make a qualified withdrawal (contributing to further overcapitalization) or an unqualified withdrawal (which in some cases can result in severe penalties, possibly as much as 90% of the funds held.) Use of CCF to fund aspects of a buyback program would require legislative action, and as a practical matter would need to be designed to be "revenue neutral" in order to be politically palatable. Interest is high, among those CCF accounts affected as well as those to whom the program has become burdensome, and industry discussions are ongoing.

Some ideas:

If assessments are made of "latent" permits, a qualified withdrawal of funds from vessel owner's Capital Construction Fund accounts (CCF) to pay for the assessment would allow equivalent tax treatment as the deduction of assessments from gross stock of vessels participating in the fisheries.

Some comments have been received that prepayment of the (estimated) assessment of vessels participating in the fisheries through a qualified withdrawal of CCF funds would help to reduce the amounts in "threatened" accounts, proving advantageous to account holders and providing earlier retirement of some of the program debt

If qualified withdrawals were approved for purchase of bonds, to be paid out over time as ordinary income, to help fund the buyback program, the amount of FOG funding required for the program would be reduced, which would lower its impact on the FOG program. These bonds could be offered at a discount to the funds withdrawn from the CCF, for instance the issue of \$700 of bonds for \$1,000 of funds, providing an obvious advantage to the funding of the buyback program, and allowing the holders of CCF funds to have an advantage over the penalties which would accrue to an unqualified withdrawal. Each case would require evaluation and negotiation. There would be net benefit to the nation from such transactions, in that funds would move from tax-sheltered accounts into circulation as taxable income, and would help to reduce overcapitalization in the crab fisheries along the way, helping to promote recovery of the stocks.

Conclusion: The CRAB Group has been guided in our research by the realization that the

supermajority requirement of the referendum precludes any member of the fleet being treated unfairly. The outpouring of ideas and support has been phenomenal. Very few vessel owners have failed to become attracted by the obvious advantages that a workable program offers to those remaining in the fishery as well as those choosing to sell out, once they have consented to open themselves to new ideas.

There has never yet been an industry-funded buyback program. Next week, West Coast inshore trawlers will unveil a plan at the Pacific Council for such a program. We will be paying careful attention to the process that develops. We would like the NPFMC to assist us in helping to assure that the process is also suitable for a buyback program for Bering Sea crab and ask for the following specific actions:

- A. That NPFMC submit the following comment to NMFS concerning the proposed rule for implementation of the License Limitation Program: "During the development of the License Limitation Program, the mechanism of an industry-funded buyout did not exist, and so was not considered. Since this mechanism has become available, it is desired to add the following language appearing on page 114 of the draft regulations, at § 279.4(iii) Severability of licenses. (B) (delete period add) *except that in the case where a groundfish license and a crab license are both issued to a vessel, the crab and groundfish licenses may be severed from one another for the sole purpose of the surrender of one part of the license (crab or groundfish) to a qualified buyback program.*
- B. That NPFMC schedule time for discussion of the draft buyback plan to be prepared by the CRAB Group at the September 1997 meeting.

CAPACITY REDUCTION AND BUYBACK ("CRAB") GROUP

June 16, 1997

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Mr. Chairman:

The Capacity Reduction and Buyback ("Crab") Group has provided the Council with information derived from a survey conducted by the McDowell Group. The purpose of the survey was to obtain a credible, initial estimate of the support among potentially affected Bering Sea crab fishing vessel owners for a permit buyback program ("Buyback Program").

This letter provides a supplementary legal analysis. Because implementing guidelines and regulations have not yet been promulgated for several relevant provisions of the Magnuson-Stevens Fishery Conservation and Management Act ("Act"), as amended in the 104th Congress by the Sustainable Fisheries Act, and because the Council has not decided whether to proceed in the direction of the Buyback Program, this analysis is both general and preliminary.¹

The Magnuson-Stevens Fishery Conservation and Management Act, As Amended

Section 312. Transition to Sustainable Fisheries

The principal statutory basis for the Buyback Program is the Magnuson-Stevens Fishery Conservation and Management Act, P.L. 94-265, as amended, 16 USC 1801, et seq. ("Act"). CRAB foresees that the Buyback Program would

¹ The Act requires that "advisory guidelines" be established for the National Standards. 16 USC 1851(b). The "Magnuson-Stevens Act Implementation Activity List", June 9, 1997, shows completion of guidelines for National Standards 9 and 10 (Items N-07.01 and N-08.01). This is incorrect. As of June 11, 1997, according to the NOAA General Counsel's Office, the guidelines were still in preparation, and were scheduled for publication, in draft form, in the Federal Register, on July 15, 1997. In addition, CRAB understands that the provisions of the Act authorizing the Buyback Program, will be the subject of implementing regulations which have not yet been drafted. 16 USC 1855 (d), 1861a (b)-(e).

be undertaken pursuant to section 312 ("Transition to Sustainable Fisheries").² 16 USC 1861a. In particular, the Buyback Program would be established in accordance with paragraphs (b)-(e) of that section ("Fishing Capacity Reduction Program", "Program Funding", "Industry Fee System", and "Implementation Plan", respectively). 16 USC 1861a (b)-(e). A copy of these provisions is appended hereto.

A particularly useful description of these and other, related statutory provisions, is found in the "Summary of Manager's Amendment to S.39 (Sustainable Fisheries Act)" ("Summary"). The Summary was included in the record of the Senate Floor debate on S. 39, by unanimous consent, at the initiative of Senator Ted Stevens, principal sponsor of the legislation, and chairman of the subcommittee of jurisdiction.

The (manager's) amendment authorizes the Secretary (of Commerce) to implement a vessel and/or permit buyout program at the request of a Council (or Governor for a fishery under a State's authority) if adequate steps are taken to ensure that vessels and permits are removed permanently and the program is needed for conservation and management. Eligible funding sources could include Saltonstall-Kennedy funds, funds appropriated for the purpose of the buyout section, funds provided by an industry fee system (which cannot exceed 5 percent of the ex-vessel value of fish harvested), of (sic) funds provided by a State or other source. The amendment authorizes the Secretary to provide direct loan obligations of up to \$100 million per fishery to finance buyout programs, which must be paid back over a twenty year period.³ Any catch history must be forfeited by the owner of a vessel or permit that is purchased under a buyout program. (Congressional Record, September 19, 1996, at S10909.)⁴

² This section was added to the Magnuson-Stevens Act by the Sustainable Fisheries Act, P.L. 104-297 (section 116), enacted on October 11, 1997. Authority for the Buyback Program may also be found in the Interjurisdictional Fisheries Act, 16 USC 4101, et seq. For various reasons, this analysis does not address the latter statute.

³ See section 303 of the Sustainable Fisheries Act (Title III, Fisheries Financing Act), P.L. 104-297, which amended title XI of the Merchant Marine Act, 1936 (46 USC app. 1271, et seq.) to include capacity reduction and financing authority. 46 USC app. 1279 f, g. Copy appended.

⁴ The wording of clause (B) suggests that, in the case of Bering Sea crab fisheries, which are subject to a federal fishery management plan, the Council would be the appropriate requester. Moreover, the fundamental authority underlying Bering Sea crab management is found in federal jurisdiction over the living marine resources of the Exclusive Economic Zone ("EEZ"). 16 USC 1811(a). State of Alaska authority for management of Bering Sea crab of the EEZ derives from a delegation of that federal authority. This is acknowledged in a Memorandum to the Board of Fisheries, March 6, 1997, prepared by the State of Alaska Department of Law. See Fishery Management Plan for Commercial King and Tanner Crab Fisheries of the Bering Sea/Aleutian Islands, approved by the Commerce Department on June 2, 1989, as amended ("Crab FMP"); and Summary of Bering Sea/Aleutian Islands King and

The Act provides specific criteria for the establishment of the Buyback Program. The Secretary of Commerce ("Secretary") must determine that the program:

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;⁵ and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

Tanner Crab Fishery Management Plan, Revised February 14, 1994 ("Summary"); State/Federal Action Plan for Management of Commercial King and Tanner Crab Fisheries, October, 1993.
⁵ Section 303 (b)(6) of the Act provides that a fishery management plan may:

establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and
- (F) any other relevant information: (16 USC 1853 (b)(6)).

It would appear that the Buyback Program, as a system established to limit access, would be subject to this provision. Notably, the criterion of present participation in the fishery would be particularly relevant to the issue of "latent permits" in the Bering Sea crab fisheries, that is, permits which have been issued and held, but not utilized in the fisheries for various periods of time.

(C) is cost-effective and capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936. (16 USC 1861a (b)(1)).⁶

CRAB believes that the Council has a sound basis for making the requisite request to the Secretary. Of course, the premise underlying the provision of the Act authorizing a fishing capacity reduction program is that there is excessive capacity in the fishery concerned. This is certainly the case in the Bering Sea crab fisheries, where capacity far exceeds resource availability.

In the notice of the August 10, 1995, notice of the Final Rule implementing the Vessel Moratorium (scheduled to expire on December 31, 1998), it is stated, "These revised amendments address fishery management problems caused by excess harvesting capacity or overcapitalization...."⁷ The June 16, 1997, notice of availability of amendments which, among other things, provide for license limitation in the Bering Sea/Aleutian Islands crab fisheries, states:

The proposed LLP is designed to halt the increase in the number of participating fishing vessels and to limit their fishing capacity. This program evolved from a longstanding Council concern that excess harvesting capacity increases the risk of management failure and inability to achieve optimum yield (OY) in the fisheries.⁸

CRAB believes that the Buyback Program is necessary, not only to prevent or end overfishing, but also to rebuild stocks of crab, and to achieve measurable and significant improvements in conservation and management of the stocks. Like the Vessel Moratorium⁹, which is currently in effect, the License Limitation Program ("LLP"), when implemented, will not reduce the capacity of the fleet in the Bering Sea crab fisheries.¹⁰ In fact, as it is now configured, the

⁶ See footnote 3, above, and section 312 (c)(1)(C), (d)(2) of the Act (16 USC 1861a (c)(1)(C), (d)(2)).

⁷ Final Rule, Limited Access Management of Federal Fisheries In and Off Alaska; Groundfish and Crab Fisheries Moratorium, 60FR 40763, August 10, 1995.

⁸ Notice of Availability of amendments to fishery management plans; request for comments; Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program (LLP); Community Development Quota (CDQ) Program, 62 FR 32579, June 16, 1997.

⁹ 50 CFR 671, 672-677. See Final Rule, 60 FR 40763-40775, August 10, 1995; Proposed Rule, 60 FR 25677, May 12, 1995.

¹⁰ The LLP will appear in the Crab FMP as Amendment 5. See Notice of availability of amendments to fishery management plans; request for comments, Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program (LLP); Community Development Quota (CDQ) Program; 62 FR 32579, June 16, 1997; and Proposed Plan Amendment Language for Vessel License Limitation in the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, H:\LICLIMIT\DOC\FINAL\LLPRORUL.FMP, June 2, 1997.

LLP will allow more capacity than exists at present in those fisheries. Nevertheless, the LLP would comply with clause (B)(i), above. The limiting management measures of the Crab FMP would comply with clause (B)(ii), above.¹¹

As regards clause (C), above, the Council and the Secretary would consider this issue. The determination would be made on the basis of the administrative record.¹²

A well-conceived Buyback Program would be consistent with the management goal and objectives, and other provisions, of the Fishery Management Plan for Commercial King and Tanner Crab Fisheries of the Bering Sea/Aleutian Islands ("Crab FMP").

The management goal is to maximize the overall long-term benefit to the nation of Bering Sea/Aleutian Island stocks of king and Tanner crabs by coordinated Federal and State management, consistent with responsible stewardship for conservation of the crab resources and their habitats.¹³

Management objectives are:

1. Ensure the long-term reproductive viability of king and Tanner crab populations.
2. Maximize economic and social benefits to the nation over time.
3. Minimize gear conflict among fisheries.
4. Preserve the quality and extent of suitable habitat.
5. Provide public access to the regulatory process for vessel safety considerations.
6. Ensure that access to the regulatory process and opportunity for redress are available to all interested parties.
7. Provide fisheries research, data collection, and analysis to ensure a sound information base for management decisions.¹⁴

In accordance with the Act, the Buyback Program would have as its objective "the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time". 16 USC 1861a (b)(2). This objective is certainly appropriate to the Bering Sea crab fisheries, in view of the poor resource and economic conditions that have prevailed for many years, and the risk of further deterioration of those conditions in years to come. As

¹¹ See Crab FMP.

¹² A discussion of title XI is beyond the scope of this preliminary analysis.

¹³ Summary, at 4.

¹⁴ Id.

provided by the Act, and as further discussed, below, it would be a responsibility of the Council to work with the Secretary to design the Buyback Program to meet this statutory requirement. 16 USC 1861a(e).

The Act provides that participation in the Buyback Program would be voluntary, but that the Secretary would be required to ensure compliance by all who participate. 16 USC 1861a (b)(3). In the absence of such a requirement, the effectiveness of the Buyback Program could not be assured. Presumably, the Council would proceed with the Buyback Program only if there were sufficient participation to result in a reduction of capacity that would be consistent with statutory requirements and principles of sound fishery management.

CRAB anticipates that an industry fee system, as authorized by the Act, would be necessary to fund the Buyback Program, which would involve substantial payments by the Secretary to permit holders or vessel owners. 16 USC 1861a (d), (b)(2). This assumption is based on anticipated constraints on the availability of funds authorized by the Act from federal and other sources. 16 USC 1861a (c)(1). The Council and the Secretary would need to determine what level of industry fees would be necessary, and whether the Buyback Program would enjoy sufficient industry support to ensure that sufficient fees would, in fact, be paid.

The Act provides for a referendum on a fee system. A two-thirds majority of the participants voting would be required for approval of the system. 16 USC 1861a (d)(1). The Buyback Program may not include industry fees or debt obligation, unless approved by the referendum. 16 USC 1861a (e)(3).

More broadly, the Secretary must consult, as appropriate, with the Council, federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of the Buyback Program. 16 USC 1861a (b)(4).

The Secretary, in consultation with the Council and other interested parties, is required to publish a draft implementation plan, which must be subject to public review and comment. 16 USC 1861a (e)(1). The Council would be required to submit its comments and recommendations to the Secretary. 16 USC 1861a(e)(2). A final implementation plan and regulations must also be prepared by the Secretary in consultation with the Council, and must be made available to the public for comment. 16 USC 1861a (e)(3).

Section 301. National Standards

CRAB believes that a reasonable construction of the Act is that "significant and measurable improvements in the conservation and management of the fishery" would be determined for the Buyback Program in light of the National Standards.¹⁵ Because National Standards 8, 9, and 10 were added to the Act in the course of its most recent reauthorization, and because they are especially relevant to the Buyback Program, this analysis addresses them, before it discusses the other National Standards.¹⁶

National Standard 8

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities. (16 USC 1851 (a)(8)).¹⁷

"Fishing community" is defined by the Act, as follows:

...a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States processors that are based in that community. (16 USC 1801 (16)).

The legislative history of this provision is extensive. Suffice it to observe, for the purposes of this analysis, that Congress intended the interests of fishing communities to be carefully considered and accommodated, consistent with the conservation strictures of the Act. The point need not be belabored, here, because the Buyout Program would well serve those communities. Reduced capacity in the Bering Sea crab fisheries could be expected to result in lengthier seasons and, over a period of years, in improved catches. Alaskan

¹⁵ The Buyback Program would have to be consistent with the applicable fishery management plan. 16 USC 1851a (b)(1)(B). The Act provides that, "Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the...national standards for fishery conservation and management." 16 USC 1851(a). The Act further provides that fishery management plans "...shall contain the conservation and management measures...which are—consistent with the national standards, the other provisions of this Act...and any other applicable law." 16 USC 1853(a)(1)(C).

¹⁶ Sustainable Fisheries Act, P.L. 104-297, section 106 (b).

¹⁷ See section 303 (b)(9)(A) of the Act, which requires fishery impact statements, to include, *inter alia*, consideration of fishing communities. 16 USC 1853 (a)(9)(A).

communities would benefit from having distant-water crab vessels in Bering Sea ports for longer periods during each year, and, eventually, from receiving increased landings. In addition, owners, operators, and crews of vessels homeported in Alaska could be expected to benefit from improved economic conditions in the fisheries.

Fishing communities outside Alaska would benefit from their owners, operators, and crews enjoying improved economic conditions. Higher personal and corporate incomes and increased tax revenues would flow to those communities.

In both the Alaskan and non-Alaskan communities, bankruptcies would be fewer than would occur in the absence of the Buyout Program, and payments to those leaving the fisheries would help with economic adjustment. Processors would benefit especially from the anticipated improvement in resource conditions.

It would be the responsibility of the Council and the Secretary to determine whether there would be any adverse effects, and to minimize them, to the extent practicable and consistent with conservation requirements of the Act. Fisheries managers would also be required to provide for the sustained participation of fishing communities in the affected fisheries, subject again, to conservation requirements of the Act. CRAB does not anticipate that adverse consequences would be significant. On the contrary, it is expected that, for the reasons outlined above, the benefits to communities would be very substantial and would outweigh any adverse consequences. Similarly, CRAB expects that the improved stability imparted to the fisheries by a reduction of capacity would, along with eventually improved resource conditions, contribute to the sustained participation of communities. On the other hand, the failure to respond to the severe conditions prevailing in the major Bering Sea crab fisheries would place sustained participation at serious risk.

National Standard 9

- (9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. (16 USC 1851(a)(9)).¹⁶

¹⁶ "Any fishery management plan...shall include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided...." 16 USC 1853(a)(11). This provision first appeared in the Sustainable Fisheries Act, P.L., 104-297, section 108(a)(11), as did the definitions quoted above (section 102(2),(9),(33)). A policy of the Act is "to assure that the national fishery conservation and management program...encourages development of

For commercial fisheries, such as those to which the Buyback Program would apply, "bycatch" is defined in the Act as:

...fish which are harvested in a fishery, but which are not sold or kept for personal use and includes economic discards and regulatory discards.... (16 USC 1802(2)).

"Economic discards" are defined in the Act as:

...fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons. (16 USC 1802 (9)).

"Regulatory discards" are defined in the Act as:

...fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell. (16 USC 1802(33)).

Much has been done to limit bycatch and bycatch mortality in the Bering Sea crab fisheries. For example, at the initiative of industry, pots have been redesigned to limit both bycatch and bycatch mortality. However, by reducing capacity in the affected fisheries, the Buyback Program would result in less bycatch and bycatch mortality than would otherwise occur. The reason is that, with fewer vessels operating in the fisheries, the pace of production would slow down, resulting in fewer pot pulls and a consequent reduction of discards and deadloss. In addition, ghostfishing would be reduced, because in a slower fishery, fewer pots would be lost or abandoned.

CRAB notes that congressional interest and intent with respect to bycatch reduction was clearly reflected in the Senate and House Floor debates on legislation to add National Standard 9 to the Act.¹⁹ Senator Stevens declared that, "Under S.39, the councils will...be required to reduce the amount of bycatch in every fishery around our country." Congressional Record,

practical measures that minimize bycatch and avoid unnecessary waste of fish...." 16 USC 1801(c)(3). See 16 USC 1853 (b)(10).

¹⁹ See S. 39, 104th Congress, 2d Session, the Sustainable Fisheries Act; S. Rpt. 104-276, Sustainable Fisheries Act, Report of the Committee on Commerce, Science, and Transportation on S. 39, May 23, 1996; H.R. 39, 104th Congress, 1st Session, Fishery Conservation and Management Act Amendments of 1995; H. Rpt. 104-171, Fishery Conservation and Management Act Amendments of 1995, Report of the Committee on Resources to Accompany H.R. 39, June 30, 1995.

September 18, 1996, at S10810. He also stated, "We thought Americanization would go a long way toward conserving the fishery resources of this Nation. Foreign vessels have now given way to U.S. vessels that are capitalized now far beyond what we ever envisioned in the seventies, and the fisheries waste continues to get worse in many areas." *Id.* Senator Murkowski stated, "This will put us on the road to stopping the shameful waste that is currently occurring in many fisheries." *Id.*, at S10820. Senator Gorton remarked, "...I join my colleagues in lauding those provisions that aim to reduce waste and bycatch in the fisheries...." *Id.*, at S10814.

On the House Floor, Congressman Young, principal author of H.R. 39, and chairman of the committee of jurisdiction, stated, "The reduction of bycatch in our fisheries is one of the most crucial challenges facing fisheries managers today." *Congressional Record*, September 18, 1995, at H9116. On passage of S. 39, he stated, "...the bill recognizes that bycatch is one of the most pressing problems facing the continuation of sustainable fisheries...." *Congressional Record*, September 27, 1996, at H11438. Establishment of the Buyback Program would, therefore, be a particularly timely and appropriate response to congressional intent.

National Standard 10

Conservation and Management measures shall, to the extent practicable, promote the safety of human life at sea. (16 USCC 1852(a)(10))

This National Standard, like the one pertaining to bycatch, was enacted in the Sustainable Fisheries Act. Section 106 (b)(10). Floor statements and committee hearings reflected enormous concern for the safety of fishermen in fisheries where excessive capacity had led to intense races for fish. Senator Murray, in her statement during debate on S.39, addressed the safety issue, as follows:

...(T)his race for fish creates serious safety considerations in many fisheries. Under this race, fishers feel compelled to keep fishing even when the weather or conditions of the vessel or health of the captain or crew would suggest otherwise. Unless fishery management plans provide opportunities and incentives for fishers to sit out storms and return to port for repairs or medical attention, lives will continue to be lost...The crab fishery of the North Pacific is the most dangerous occupation in the Nation....

For this very reason we included promotion of safety of life at sea in the National Standards of the Magnuson Act. (*Congressional Record*, September 18, 1996, at S10818).

By assuring a slower harvesting pace in the Bering Sea crab fisheries, the establishment of the Buyback Program would result in improved safety of life at sea. Fishermen would be better able to provide for the maintenance of their vessels, and to avoid excessive fatigue and dangerous weather conditions.

National Standard 1

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. (16 USC 1851 (a)(1)).

"Overfishing" is defined by the Act as, "...a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis." 16 USC 1802 (29).²⁰

"Optimum yield" is defined as follows:

The term "optimum yield", with respect to the yield from a fishery, means the amount of fish which—

- (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
- (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor;²¹ and
- (C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery. (16 USC 1802 (28)).

The establishment of the Buyback Program would contribute to compliance with National Standard 1, by reducing fishing pressure on Bering Sea crab resources, most of which are in severely depressed condition. With

²⁰ Section 103 (29) of the Sustainable Fisheries Act, P.L. 104-297, established this definition. Section 303 (a)(10) of the Act provides that a fishery management plan must specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished, with a related analysis of reproductive potential, and in the case of a fishery determined by the Council or Secretary to be approaching overfished condition or is overfished, the plan must contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery. 16 USC 1853 (a)(10).

²¹ Section 103 (28)(B) of the Sustainable Fisheries Act, P.L. 104-297, amended this definition to strike "modified" and insert in lieu thereof, "reduced". See S. Rpt. 104-276, at 11.

fewer vessels operating in the fisheries, overfishing would be more readily avoided, and the optimum yield more readily achieved.

National Standard 2

Conservation and management measures shall be based upon the best scientific information available. (16 USC 1851 (a)(2)).

CRAB believes that the best scientific information available will support the establishment of the Buyback Program. The industry survey commissioned by CRAB is intended to provide a basis upon which the Council may proceed in a well-informed way with consideration of the Buyback Program. Secretarial action, at the request of the Council, will provide a further opportunity to develop the needed information.

National Standard 3

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. (16 USC 1851 (a)(3)).

Here, again, compliance with the National Standard will depend upon action by the Council and the Secretary. It is the intention of CRAB that the Buyback Program apply to Bristol Bay red king crab, as a discretely managed stock, and all Bering Sea Tanner crab, which would accord with this National Standard.

National Standard 4

Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. (16 USC 1851 (a)(4)).

The Buyback Program would promote conservation, as has been shown, above. There is nothing inherent to the goal of reduced capacity or to the Buyout Program, nor is there anything particular to the Bering Sea crab fisheries, that would preclude compliance of that Program with National Standard 4. It would be the responsibility of the Council and the Secretary to assure

configuration of the Buyback Program in a way that would meet the stated requirements.

National Standard 5

Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.²² (16 USC 1851 (a)(5)).

The Buyback Program would be consistent with this National Standard. Efficiency would be a consideration in the context of capacity reduction. The fewer, remaining vessels in the Bering Sea crab fisheries would be able to operate more efficiently. Vessels would be idle for fewer months of the year, because seasons would be longer. As in the case of the fleet, shorebased processors would adjust their operations, and this fact would need to be considered. CRAB believes that, in the final analysis, the best interests of both sectors would be served by the establishment of the Buyback Program.

The Buyback Program would clearly be in compliance with the economic allocation provision of National Standard 5. The purposes of the Buyback Program would be to improve safety of human life at sea and conservation of the crab stocks, including reduction of bycatch and bycatch mortality, and to increase the economic viability of the industry. Economic allocation would be merely an incidental consequence, not the sole purpose, of the Buyback Program.

National Standard 6

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. (16 USC 1851 (a)(6)).

The Council and the Secretary would be expected to ensure that the Buyback Program would take into account the stated factors in National Standard 6. Nothing inherent to the Buyback Program or the affected fisheries would suggest that this could not readily be accomplished.

National Standard 7

²² Section 106 (a) to the Sustainable Fisheries Act, P.L. 104-297, substituted the term, "consider", for the term, "promote", that appeared in the Act prior to the 1996 amendments.

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. (16 USC 1851 (7)).

CRAB believes analysis will show that the Buyback Program would be consistent with this National Standard. Costs associated with continued, massive overcapitalization of the Bering Sea crab fisheries would appear to outweigh greatly the costs of the Buyback Program. CRAB intends to assist the Council and the Secretary in the development of a definitive cost/benefit analysis, should the Buyback Program be pursued further.

Other Provisions of the Act and Other Laws

It is beyond the scope of this preliminary analysis to address comprehensively the provisions of the Act and other laws that relate to the Buyback Program. CRAB believes that the Buyback Program is conceptually consistent with the relevant Findings, Purposes, and Policies of the Act, and with its other provisions, as well as with other applicable law.

CRAB is confident that the Council and the Secretary can design and implement the Buyback Program to meet all legal requirements. CRAB pledges its assistance to that end.


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