

MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Clarence G. Pautzke  
Executive Director  
DATE: September 22, 1994  
SUBJECT: Moratorium



ESTIMATED TIME  
4 HOURS

**ACTION REQUIRED**

- (a) Review SOC letter.
- (b) Consider resubmission.

**BACKGROUND**

Review Disapproval Letter

On August 5, 1994 the Secretary of Commerce (SOC), in a letter to Chairman Lauber, disapproved the Moratorium approved by the Council on June 24, 1992. The letter is included in the notebook as Item C-1(a), followed by a copy of the Moratorium Proposed Rule as published in the *Federal Register*. The SOC cites significant difficulties with the crossover provisions and the qualifying period: "Taken together or separately, these two provisions would allow an increase in fishing capacity in fisheries already beset by overcapacity problems. It is not clear how either provision would enhance the achievement of optimum yield." The SOC also cites problems in the Council's consideration of present participation, the inclusion of the vessels which fished only for halibut, and the appeals procedures. Finally, the Secretary recommends the Council submit a revised Moratorium package that deals with these problems and would establish a fleet closer to the "2500 vessels annually permitted to operate in the groundfish and crab fisheries in recent years." Item C-1(b) contains letters received regarding the moratorium disapproval and potential resubmission.

Consideration of Resubmittal

The Council staff has reviewed the SOC's disapproval letter as well as the Final EA/RIR/IRFA for the Moratorium, and believes that the actions outlined below could be taken, and remain within the bounds of the existing analyses. This would allow final action on resubmission at this meeting. Assuming an additional month for preparation of a revised Proposed Rule, the 30 day review could begin in November 1994. If the Council chooses to pursue actions which would require additional analysis, some delays will be encountered, not only in the resubmission of the Moratorium, which would have to wait until after the December meeting, but also in other analytical issues, such as the License Limitation Program and Inshore-Offshore.

1. Eliminate halibut as a moratorium fishery. Halibut was left in the moratorium as a safety net if the SOC disapproved the IFQ program. Since the halibut IFQ program was approved there is no need to keep halibut within the Moratorium. This would cut back the number of vessels, even assuming no change in qualifying dates by 7,547 from 13,507 to 5,960.
2. Use January 1, 1988 through February 9, 1992, as the qualification period. The information to use this period is complete in the EA/RIR. Without halibut, the number of vessels under these dates would drop to 4,248.
3. Pass two separate moratoria, one for groundfish, one for crab. By creating two separate moratoria, crossovers are not an issue. Using the 1988-1992 dates this would mean 3,971 vessels in the groundfish fishery and 484 vessels in the crab fisheries.
4. Eliminate Small Vessel Exemptions, if desired.
5. Take no additional action with regard to "present participation." The Council provided the fishing industry with several years notice of their intent to impose a moratorium on the groundfish and crab fisheries. The qualifying period grants moratorium rights to all vessels which entered the groundfish fisheries after the Council's September 15, 1990 moratorium cut-off date through February 9, 1992. At the time of the Council's action in June of 1992, February 9, 1992 was considered the "present." The two-year delay of submission of the proposed rule created the appearance that newly entering vessels were not considered. The following table details the 394 vessels which participated in the fisheries between February 9, 1992 and April 4, 1994, but which were not 'moratorium qualified'. Excluding the 343 halibut vessels, there were 51 vessels of all lengths which entered the fisheries.

Fishery	Total Vessels	Vessels ≥26' LOA
Halibut	343	156
Crab	11	8
Groundfish (with Federal Permits)	14	14
Groundfish (inside State Waters)	26	13
All fisheries under Council Jurisdiction	394	191

Of the 51 vessels, 16 were <26' and would qualify anyway, if the Council retains the small vessel exemption. This leaves a total of 35 vessels >26' that entered the fisheries, excluding halibut.



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

August 5, 1994

AUG - 9 1994

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

Dear Mr. ~~Lauber~~ *Rich*:

I have disapproved fishery management plan (FMP) amendments developed and recommended by the Council to impose a moratorium on the entry of new vessels into the groundfish and crab fisheries off Alaska governed by Federal FMPs. In addition, I have disapproved a regulatory amendment proposed by the Council to impose the moratorium on the Pacific halibut fishery in and off of Alaska. Disapproval of the proposed FMP amendments is taken under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This section of the Magnuson Act also provides an opportunity for the Council to submit revised moratorium amendments and proposed regulations. In this event, we would give the revised documents expedited review as required by the Magnuson Act.

I am hopeful that the Council will decide to revise its moratorium proposal and resubmit it because some interim controls on fishing capacity clearly are needed while the Council's comprehensive rationalization plan continues under development, review, and implementation. A moratorium could be implemented in 1995 if the Council acts promptly to revise its proposal as recommended below. The following presents the reasons for my disapproval decision.

In June 1992, the Council adopted for review by the Secretary of Commerce (Secretary) three FMP amendments and a regulatory amendment with respect to the Pacific halibut fishery in and off of Alaska. The proposed FMP amendments were (a) Amendment 23 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Management Area, (b) Amendment 28 to the FMP for Groundfish of the Gulf of Alaska (GOA), and (c) Amendment 4 to the FMP for Commercial King and Tanner Crab Fisheries in the BSAI Area. The proposed moratorium involved a system for limiting access to the fisheries by only those vessels that had met certain criteria for receiving a license to operate in the fisheries.

After careful consideration of public comments, issues raised during Council development of the proposed amendments, the documents submitted by the Council, and the public record, I



found that elements of the proposed FMP amendments would be inconsistent with the Magnuson Act and other applicable law.

The most significant difficulties with the moratorium as proposed were the crossover provision and the qualifying period. The crossover provision would have allowed a vessel with no prior history of participation in one moratorium fishery to enter that fishery because of prior participation in a different moratorium fishery. Under this provision, substantial numbers of vessels could enter either fishery for the first time under the crossover provision, thereby exacerbating the overcapacity problem in that fishery and confounding the expressed objective of the moratorium to freeze the number of vessels in the groundfish, crab and halibut fisheries. Likewise, the qualifying period would have allowed fishing capacity, in terms of numbers of vessels, to increase significantly instead of being held roughly constant with that experienced in recent years.

Taken together or separately, these two provisions would allow an increase in fishing capacity in fisheries already beset by overcapacity problems. It is not clear how either provision would enhance the achievement of optimum yield (OY) from the groundfish and crab fisheries. The OY from a fishery is defined basically as a yield determined by a biological measure as modified by any relevant economic, social or ecological factors. It is not apparent how the OY from the groundfish and crab fisheries would be achieved better under the proposed moratorium, as compared to the status quo alternative, by allowing a potential doubling of the fleet size in one of the moratorium fisheries or overall. This resulted in a finding of inconsistency with national standard 1.

National standard 4 requires that an allocation of fishing privileges under an FMP must be fair and equitable. The FMP guidelines at 50 CFR part 602 interpret the "fairness and equity" standard as requiring an allocation to be rationally connected with the achievement of OY or with furthering a legitimate FMP objective. As explained above, the achievement of OY could be frustrated by the crossovers and the qualifying period, and it is not clear which FMP objective would be furthered by these provisions.

The crossover and qualifying period provisions are not consistent with national standard 5. This national standard requires management measures to promote efficiency in the utilization of fishery resources, where practicable, except that no such measure shall have economic allocation as its sole purpose. Allowing an increase in capacity in any one of the oversubscribed fisheries that would be covered by the moratorium does not promote efficiency, and there is no rationale presented that indicates why it would not be practicable to prevent crossovers or have a shorter qualifying period.

Moreover, there is no apparent justification for discriminating between two vessels that have no prior participation in a moratorium fishery by allowing one but not the other to enter that fishery. Consider, for example, a crab vessel that made a qualifying landing of crab in the early 1980s but has not stayed active in the fishery and has not participated in the groundfish fisheries, and another vessel that did not make a qualifying landing but has participated steadily in the groundfish fisheries since 1992. As proposed, the crossover provision would allow the crab vessel to enter the groundfish fishery for the first time under the moratorium. Entry would be denied, however, to the currently active groundfish vessel. Without a reasonable justification in the record, approval of the moratorium amendments as proposed, including the crossover provision and qualification period, would be arbitrary and capricious in violation of the Administrative Procedure Act (APA).

It is not clear that the Council adequately considered present participation in the fisheries along with the other factors that are required to be considered in developing a limited access system by section 303(b)(6) of the Magnuson Act. These considerations should be clear in the record or the recommended limited access policy violates section 303(b)(6) and the APA.

The proposed appeals procedure would involve an adjudication board comprised of government personnel and non-voting industry representatives. The purpose of this element is to resolve administratively disputes over moratorium eligibility. However, another appeals procedure already has been established in the Alaska Region to resolve limited access disputes. This procedure is specified at 50 CFR 676.25. The existence of this appeals procedure and a separate appeals procedure for the moratorium would not minimize costs and avoid unnecessary duplication, and so violates national standard 7.

We did not partially disapprove these elements of the proposed moratorium and begin implementing the approved portions because this would have substantially changed the limited access system recommended by the Council.

I agree with the basic objective of the proposed moratorium and that there is a need to provide an interim freezing of the number of vessels currently involved in the groundfish and crab fisheries. Any other management regime that will effectively resolve overcapacity problems in the fishing industry, if approved, is still years away from implementation. Submitting a revised moratorium proposal would take advantage of the expedited review provision of the Magnuson Act and allow possible implementation next year.

Therefore, I recommend that the Council submit a revised moratorium package after reconsideration of the crossover

provision and the qualifying period with a view toward establishing a qualified fleet size closer to the approximately 2500 vessels annually permitted to operate in the groundfish and crab fisheries in recent years. The Council should consider participation by vessels in 1992 and 1993. If the Council does not wish to include these vessels, the reasons for excluding them must be clearly explained. Additional analysis would be necessary to supplement the existing analysis if the preferred alternative is changed. However, if the Council chooses to resubmit the same moratorium recommendation, it should supplement the analysis to demonstrate that the proposed amendments are consistent with the provisions of the Magnuson Act and the other applicable laws described above.

I recommend no further Council effort to revise the moratorium with respect to including halibut or the appeals procedure. The halibut fishery will be managed under the IFQ program approved last year, and we have established an appeals procedure applicable to any limited access program. Hence, further work in these areas does not appear necessary.

Sincerely,



Steven Pennoyer  
Director, Alaska Region

12612. The Department has certified that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

#### Paperwork Reduction Act

No new information collection requirement(s) are contained in this proposed rule for which OMB approval under 44 U.S.C. 3501 is necessary.

#### List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

#### Regulation Promulgation

Accordingly, part 15 of Chapter I of title 50 of the Code of Federal Regulations is proposed to be revised as follows:

#### PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: 16 U.S.C. 4901–4916.

2. Section 15.11 of subpart B is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

#### § 15.11 Prohibitions.

\* \* \* \* \*

(b) It is unlawful to import into the United States any exotic bird species listed in the Appendices to the Convention that is not included in the approved list of species, pursuant to subpart D of this part, except that this paragraph (b) does not apply to any exotic bird that was bred in a foreign breeding facility listed as qualifying pursuant to subpart E of this part.

(c) It is unlawful to import into the United States any exotic bird species not listed in the Appendices to the Convention that is listed in the prohibited species list, pursuant to subpart F of this part.

\* \* \* \* \*

Dated: May 23, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–13556 Filed 6–2–94; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 671, 672, 675, and 676

[Docket No. 940556–4156; I.D. 050494B]

RIN 0648–AE62

#### Limited Access Management of Federal Fisheries In and Off of Alaska

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

ACTION: Proposed rule; request for comments.

**SUMMARY:** This proposed rule would implement a moratorium for a temporary period on the entry of new vessels into the groundfish, crab, and halibut fisheries contained in proposed Amendment 23 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), proposed Amendment 28 to the FMP for Groundfish of the Gulf of Alaska (GOA), proposed Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area, and a proposed regulatory amendment affecting the Pacific halibut fishery in the waters in and off of Alaska. The moratorium is designed as a temporary measure that is necessary to curtail increases in fishing capacity and provide industry stability while the North Pacific Fishery Management Council (Council) and the Secretary of Commerce (Secretary) prepare, review, and, if approved, implement a comprehensive management plan for these fisheries. This action is intended to promote the objectives of the Council to promote conservation and management of groundfish, crab, and halibut resources, and to further the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

**DATES:** Comments must be received at the following address by July 15, 1994.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802. Attention: Lori J. Gravel. Copies of proposed Amendments 23 and 28 to the BSAI and GOA groundfish FMPs, Amendment 4 to the Bering Sea and Aleutian Islands Area king and Tanner crab FMP, and the Environmental

Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the moratorium may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** David C. Ham, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

#### SUPPLEMENTARY INFORMATION:

#### Background

Domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the GOA and BSAI FMPs. The commercial harvest of king and Tanner crabs is managed under the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These FMPs were prepared by the Council under the Magnuson Act. The FMP for the GOA groundfish fisheries is implemented by regulations at 50 CFR parts 672 and 676, and the FMP for the BSAI groundfish fisheries is implemented by regulations at 50 CFR parts 675 and 676. The FMP for the king and Tanner crab fisheries in the BSAI is implemented by regulations at 50 CFR part 671 and by Alaska Administrative Code regulations at title 5, chapters 34 and 35. For crab, BSAI means the Bering Sea and Aleutian Islands area as defined at § 671.2, and is a slightly different area than the BSAI management area as defined for groundfish at § 675.2. General regulations that also pertain to the U.S. groundfish and crab fisheries are set out at 50 CFR part 620.

The Council does not have a FMP for halibut. The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington, DC, March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop for approval by the Secretary limited access policies for the Pacific halibut fishery in Convention waters in and off of Alaska.

“Convention waters” means the maritime areas off the west coast of the United States and Canada as described

The qualifying period adopted by the Council would allow approximately 13,500 vessels to be eligible to participate in the moratorium fisheries during the moratorium. Substantially fewer vessels participate in any one year. In 1991, only about 4,500 vessels participated in the moratorium fisheries. NMFS particularly requests public comment on the effect of this qualifying period on the objectives of the moratorium.

#### 4. Minimum Qualifying Poundage

The Council did not require landing of a specific minimum poundage from a moratorium fishery. A qualifying vessel would be one that made a reported landing from a moratorium fishery during the qualifying period. The Council reasoned that basing moratorium eligibility on landing a minimum amount from a moratorium fishery would become allocative among different segments of the industry and should be addressed in the comprehensive management plan.

#### 5. Duration of Moratorium

The moratorium would be in effect for no longer than 3 years from the date of implementation. The proposed FMP amendment language states that the Council may extend the moratorium for up to 2 years if a permanent limited access program is imminent. This provides flexibility in the duration of the moratorium if progress is made on a permanent limited access program, but does not unnecessarily prolong the moratorium in the absence of further progress on the underlying overcapitalization problem. If no further action is taken concerning a limited access program during the moratorium, the moratorium would expire, because its justification would no longer be valid.

#### 6. Crossovers

The Council determined that a qualifying vessel would be allowed to participate in all moratorium fisheries during the moratorium, even if the vessel had a reported landing from only one moratorium fishery. The Council reasoned that restrictions on the ability to crossover into other moratorium fisheries would constrain a fisherman's flexibility during the moratorium and would be allocative among different sectors of the industry. The Council determined that crossover restrictions would be addressed under the comprehensive management plan.

Crossovers during the moratorium could result in the entry of groundfish and halibut vessels into the crab fisheries, halibut vessels into the

groundfish fisheries, and crab pot vessels into the groundfish fisheries. NMFS particularly requests public comment on crossovers, because crossover ability could have the potential to increase the harvesting capacity in the groundfish and crab fisheries, thwarting the goals of the moratorium.

#### 7. Transfer of Moratorium Qualification

"Moratorium qualification" is proposed for all qualifying vessels. Moratorium qualification could be transferred if two requirements were satisfied. First, the vessel transferring moratorium qualification would no longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, if moratorium qualification were transferred to another vessel, a vessel length restriction would apply to the receiving vessel. The latter restriction, known as the "20 percent rule", would restrict vessels that are equal to, or less than, 125 ft (38.1 m) length overall (LOA) from increasing LOA by more than 20 percent, or 125 ft (38.1 m), whichever is less. Vessels over 125 ft (38.1 m) LOA would not be allowed to increase LOA during the moratorium. The LOA of a vessel, as defined at §§ 672.2 and 675.2, means the horizontal distance, rounded to the nearest foot (.33 m) 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. For example, the owner of a vessel that is 100 ft (30.5 m) LOA could transfer that vessel's moratorium qualification to a vessel that is 120 ft (36.6 m) LOA or less. The 100-ft (30.5 m) LOA vessel would not be able to participate in any of the moratorium fisheries for the duration of the moratorium because it does not have moratorium qualification. The 100-ft (30.5 m) vessel would be able to participate if it received transferred moratorium qualification from a vessel that was 83 ft (25.3 m) LOA or longer.

The Council did not select a date before which the transfer of moratorium qualification would not be allowed. Recognizing that a market in moratorium qualification had developed, the Council determined that moratorium qualification would rest with the qualifying vessel unless otherwise specified by legal agreement. The Council also determined that the transfer of moratorium qualification would not result in a transfer of the vessel's catch history.

#### 8. Replacement of Vessel

Until the moratorium expires, the owner of a vessel with moratorium qualification would be able to replace that vessel with a vessel that does not have moratorium qualification as long as two requirements were satisfied. First, the replaced vessel would no longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium, unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, any increase in LOA through vessel replacement, sequential vessel replacements, or combined replacement and reconstruction would be limited by the 20 percent rule. The Council deemed the vessel replacement provision as necessary to facilitate the normal and on-going vessel replacement activities undertaken by vessel owners in response to financial, economic, and efficiency incentives.

#### 9. Reconstruction of Vessel

A qualifying vessel that is reconstructed would have to comply with certain restrictions in LOA to remain eligible to participate in any of the moratorium fisheries. The proposed restrictions are: a. If vessel reconstruction were completed before June 24, 1992, any increase in LOA resulting from that reconstruction would be unrestricted; additional reconstruction would be allowed after June 24, 1992, subject to the 20 percent rule. b. If reconstruction were started before June 24, 1992, but not completed by that date, any increase in LOA resulting from that reconstruction would be unrestricted, but no more increases in LOA would be allowed during the moratorium. c. If reconstruction were started on or after June 24, 1992, any increase in LOA resulting from that reconstruction would be subject to the 20 percent rule.

The Council determined that it was important to allow increases in vessel LOA through reconstruction to provide for enhanced safety and stability, or to allow for the installation of processing equipment. However, the Council determined that reconstruction should not allow unlimited increases in LOA or the objectives of the moratorium would be compromised. The Council chose to limit LOA as a measure of fishing capacity, because it believed LOA was unambiguous, easily determined, and difficult to circumvent. To account equitably for actions already taken by vessel owners, restrictions on increases in LOA would be applicable only to changes that occurred after June 24,



the management of the fishery to the State.

An owner of a support vessel that intends to participate in the moratorium fisheries from January 1, 1995, through December 31, 1997, would have to apply for and receive a permit, but would not be subject to the moratorium eligibility requirements.

Permits and licenses issued under the moratorium would remain harvesting privileges and the Secretary would have the authority to amend or revoke the moratorium and any harvesting privileges thereunder, if required for conservation of the resources.

#### Eligibility Requirements

As previously discussed, a vessel would be eligible to receive a permit or license if it has moratorium qualification and if its LOA does not exceed the applicable length restrictions. NMFS is proposing to implement the Council's length increase restrictions, or the 20 percent rule, by requiring the LOA of a vessel to be no greater than 1.2 times the "original qualifying length" of the qualifying vessel. This calculation results in a "maximum LOA" that the vessel may not exceed during the moratorium. The original qualifying length would be the registered length of a qualifying vessel that appears on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation, or State documentation if the vessel is not required to have U.S. Coast Guard Documentation. For vessels with an original qualifying length of less than or equal to 104 ft (31.7 m), the maximum LOA would be 1.2 times the original qualifying length. For vessels with an original qualifying length greater than 104 ft (31.7 m) but less than or equal to 125 ft (38.1 m), the maximum LOA would be 125 ft (38.1 m). For vessels with an original qualifying length greater than 125 ft (38.1 m), the maximum LOA would be the original qualifying length. Vessels that satisfy both moratorium conditions would be "eligible vessels."

#### Vessel Reconstruction

Vessel reconstruction means an adjustment in the LOA of a qualifying vessel. NMFS proposes that the maximum LOA for a qualifying vessel that is 125 ft (38.1 m) LOA or less could be adjusted through reconstruction and the vessel would remain an eligible vessel under the following three conditions. First, if vessel reconstruction were completed on or before June 24, 1992, the LOA of the reconstructed vessel would become the new original qualifying length of the

vessel. The new original qualifying length then would be used to calculate maximum LOA as described above under "Eligibility Requirements." Second, if vessel reconstruction were started before June 24, 1992, but not finished by that date, the LOA of the reconstructed vessel would become the new maximum LOA for the vessel. No further increase in LOA would be permitted during the moratorium. Third, if vessel reconstruction were started on or after June 24, 1992, the maximum LOA would not be adjusted during the moratorium, and any increases in LOA as a result of reconstruction would have to be less than or equal to the maximum LOA for the vessel. Vessel reconstruction would begin and end with the start and completion of the physical modification of the vessel. The determination of any adjustment in maximum LOA for reconstructed vessels would have to be approved by NMFS and be based on documentation supplied to NMFS that verifies the beginning and ending dates of vessel reconstruction. NMFS proposes that acceptable documentation of the beginning and ending dates of reconstruction would be limited to a notarized affidavit signed by the vessel owner and the owner/manager of the shipyard that specifies the beginning and ending dates of the reconstruction. NMFS particularly requests comments from the public on this proposed method for documenting the beginning and ending dates of vessel reconstruction.

#### Transfer of Moratorium Qualification

Moratorium qualification would be transferable from a vessel to another vessel or person, or from a person to another person or vessel. Any transfer of moratorium qualification by a vessel would make that vessel ineligible. For the purposes of implementing the moratorium, vessel replacement would be considered a transferral of moratorium qualification. Additionally, to establish transfer of moratorium qualification by legal agreement, NMFS proposes that a written contract must exist that documents the transfer and includes certain information as proposed in § 676.3(b)(1)(i).

NMFS would determine the maximum LOA for each qualifying vessel prior to the implementation of the moratorium. When the moratorium qualification of a qualifying vessel is transferred to another vessel or person, the maximum LOA of the qualifying vessel also would be transferred to the vessel or person receiving the moratorium qualification. Maximum LOA would remain attached to a

specific moratorium qualification regardless of how many times that moratorium qualification was transferred. If moratorium qualification is transferred to a smaller vessel, that smaller vessel would retain the maximum LOA of the qualifying vessel.

#### Definition of Vessel Length

The Council intended that the limitations on increases in vessel length be based on the LOA of the vessel. The current LOA of a vessel can be measured as it is defined in §§ 672.2 and 675.2, but complete records of the historical LOA of vessels during the qualifying period are not available for calculating the maximum LOA as proposed by NMFS. Various methods for measuring vessel length were used on vessel permit and license forms during the qualifying period by NMFS, the State, IPHC, and the U.S. Coast Guard (USCG). For example, several different methods of measuring "registered length" were used, and an undefined vessel "length" was used in addition to LOA. NMFS proposes, for purposes of the moratorium, that historical LOA equal the registered length listed on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation to provide a single source of data for most original qualifying vessels. A vessel under 32 ft (9.8 m) LOA that does not have USCG documentation may use vessel length as specified in State registration.

A difficulty with the NMFS proposal is that the USCG registered length is sometimes less than actual LOA. This may cause a problem for a vessel that already has increased its length using actual historical LOA according to the Council's recommendations, resulting in an increase that exceeds the maximum LOA. Consequently, the vessel would be an ineligible vessel. Also, a vessel that has not yet increased its length according to the Council's 20 percent limit would not be able to increase its length as much as would be allowed if historical LOA were used instead of historical registered length. NMFS particularly requests comment from the public on this subject.

#### Replacement or Salvage of a Lost or Destroyed Vessel

If a vessel owner submits an application to NMFS for the replacement or salvage of a lost or destroyed vessel, NMFS proposes to determine whether a vessel is lost or destroyed by consulting the U.S. Coast Guard Report of Marine Casualty, form 2692. If NMFS determines that a vessel is lost or destroyed, a vessel owner

NMFS would send a Letter of Authorization to the vessel owner within 30 days of receipt of the application, if NMFS has not issued a written initial decision to the vessel owner regarding his vessel's qualification. This Letter of Authorization would be in effect until superseded or rescinded by the Regional Director.

If a vessel owner files a notice of appeal with the Regional Director, NMFS would send a Letter of Authorization to the vessel owner within 30 days of the filing of the appeal with NMFS, pending issuance of a written final decision to the vessel owner on the appeal. This Letter of Authorization would expire 30 days after the Regional Director issues a written final decision on the appeal.

#### Appeals Procedure

NMFS proposes the following appeals procedure to implement the Council's appeal provisions. A vessel owner may appeal the initial denial of a groundfish and crab vessel permit, the issuance of a restricted halibut vessel license, or the issuance of a restricted groundfish and crab vessel permit to the Regional Director within 45 days of issuance of written notice from NMFS or the IPHC. The Regional Director would decide the appeal on a review of the records submitted, and issue a written decision on the appeal. If the Regional Director were to determine that in deciding the appeal, his decision would benefit from industry input, the Regional Director would forward the appeal to the Appeals Board. NMFS proposes that the Appeals Board would be a committee of the Council comprised of three appointed Council Advisory Panel members. The Appeals Board would meet publicly to discuss the appeal. After receiving the Appeals Board's recommendation from the Council, the Regional Director would consider the recommendation and issue a written decision on the appeal. The Regional Director's decision would constitute the final agency action upon which the applicant would be able to file suit in U.S. District Court.

Notice of a proposed rule that would govern appeals of determinations made for the IFQ program was published on February 9, 1994 (59 FR 5979). Public comment is particularly requested on using the same appeals procedure for the IFQ and moratorium programs.

#### Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule, if adopted, could have a significant economic impact on a

substantial number of small entities. Based on the EA/RIR/IRFA for the moratorium, total participation in the moratorium fisheries for a given year is influenced by the annual rate of entrance and exit of vessels. Although new entrants averaged nearly 900 vessels annually over the period from 1977 through 1991, total participation increased only 180 vessels per year, on average, because 500 to 1,000 vessels exited the fisheries annually.

Vessel participation data for 1992 have become available since this analysis was performed. The source of these data are the State of Alaska fish ticket, NMFS groundfish vessel permit, weekly production report, and catch estimate databases.

In 1991, 2,227 vessels fished in Alaska Federal groundfish fisheries, and in 1992, 2,341 vessels fished, for an increase in 1992 of 114 vessels.

Approximately half (46 vessels) of this increase is due to vessels less than 60 ft (18.3 m) LOA. Such vessels normally do not make a significant contribution to the overall landings of groundfish. In addition, vessels less than 26 ft (7.9 m) LOA in the GOA and those less than 32 ft (9.8 m) LOA in the BSAI area would be exempt from the moratorium. After subtracting such small vessels and considering only those newly permitted vessels that made recorded groundfish landings in 1992, only about 27 vessels apparently entered the groundfish fishery in 1992 for the first time, and would not be eligible to fish under the moratorium. With respect to halibut, about 156 "new" vessels made landings for the first time in 1992 (some of these had groundfish and crab landings records also). With respect to BSAI crab, eight "new" vessels made landings for the first time in 1992. Therefore, a total of about 191 vessels apparently entered the groundfish, halibut, and crab fisheries for the first time in 1992 and may not be eligible for a license if the moratorium is approved and implemented as proposed.

The number of "new" vessels that entered these fisheries in 1993 and 1994 is unknown because individual vessel catch data are still preliminary. Assuming that roughly the same number of "new" vessels entered these fisheries in 1993 and 1994 as entered in 1992 probably is unrealistic. The Council's moratorium decision occurred midway through 1992. Most fishermen decide whether to enter a fishery at the beginning of the year. Public knowledge of the Council's action after June 1992 probably had a negative effect on a decision to enter a "new" vessel in 1993 or 1994. According to the NMFS vessel permit database, about 447 Federal

groundfish vessel permits were issued between February 9, 1992, and March 21, 1994, that had never before obtained a groundfish vessel permit. However, the majority of these "new" vessel permits likely were issued to halibut longline vessels, which would be exempt from the moratorium when the halibut IFQ program is fully implemented in 1995. In addition, some unknown number of these "new" groundfish vessel permits were never used to actually harvest and land groundfish, and others were issued to small vessels that would be exempt from the moratorium. For the reasons described above, the number is likely more than 35, but less than 100, based on the available data and knowledge of the fisheries. A copy of the EA/RIR/IRFA may be obtained (see ADDRESSES).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) that have been submitted to the Office of Management and Budget for approval. Public reporting burden for each year of this collection is estimated to average 0.5 hours per response for completing each of the six information collection requests, except for the crab permit application, which is .33 burden hours per response. The six information collection requests and the estimated number of annual responses are: 1. Crab vessel permit applications, 400; 2. applications for transfer of moratorium qualification, 715; 3. applications for vessel reconstruction, 143; 4. transfer of a lost or destroyed vessel's moratorium qualification, 36; 5. salvage of lost or destroyed vessels, 36; and 6. applications for appeal, 358. These reporting burdens include the time for reviewing the instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

This proposed rule is exempt from prepublication review for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 671, 672, 675, and 676

Fisheries, Recordkeeping and reporting requirements.

be issued in accordance with the moratorium provisions at 50 CFR 676.3.

#### PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA

8. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

9. Section 675.3(f) is added to read as follows:

##### § 675.3 Relation to other laws.

(f) *Crab fishing.* This paragraph (f) is effective from [date 30 days from date of publication of final rule in the Federal Register], through December 31, 1997. Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at 50 CFR parts 671 and 676.

10. Section 675.4(a) is revised to read as follows:

##### § 675.4 Permits.

(a) *General.* (1) No vessel of the United States may fish for groundfish in the Bering Sea and Aleutian Islands management area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) *Issuance of Permits During 1995, 1996, and 1997.* This paragraph (a)(2) is effective from [date 30 days after date of publication of final rule in the Federal Register], through December 31, 1997. Permits issued under this section for the 1995, 1996, and 1997 fishing years shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

#### PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

11. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

12. Subpart A is amended by adding §§ 676.1 through 676.7 to read as follows:

##### Subpart A—Moratorium on Entry

Sec.

676.1 Purpose and scope.

676.2 Definitions.

676.3 Issuance of vessel permits.

676.4 Exemptions.

676.5 Permit issuance procedure.

676.6 Appeals.

676.7 Prohibitions.

##### § 676.1 Purpose and scope.

This section is effective from [date 30 days after date of publication of the final

rule in the Federal Register], through December 31, 1997.

(a) Subpart A of this part implements the moratorium program developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce.

(b) Regulations in subpart A govern:

(1) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for groundfish in that portion of the Gulf of Alaska and Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority;

(2) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for king or Tanner crab in that portion of the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority; and

(3) The issuance of International Pacific Halibut Commission vessel licenses for regulating participation in the commercial fisheries for Pacific halibut in Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska.

##### § 676.2 Definitions.

This section is effective from [date 30 days after date of publication of the final rule in the Federal Register], through December 31, 1997. In addition to the definitions in the Magnuson Act and in 50 CFR parts 301, 620, 671, 672, and 675, the terms in subpart A of 50 CFR part 676 have the following meanings:

*Appeals Board* means a North Pacific Fishery Management Council adjudication board comprised of three North Pacific Fishery Management Council Advisory Panel members appointed by the North Pacific Fishery Management Council.

*Eligible vessel* means a vessel that has moratorium qualification and has an LOA that is less than or equal to the maximum LOA.

*Harvest or harvesting* means any activity, other than scientific research conducted by a scientific research vessel, that involves the catching or taking of fish, the attempted catching or taking of fish, or any other activity that can reasonably be expected to result in the catching or taking of fish.

*Legal landing* means any amount of a moratorium species that was harvested and landed in compliance with State and Federal regulations in existence at the time of the landing.

*Letter of authorization* means a letter from NMFS to a vessel owner authorizing a vessel to make a legal landing of any moratorium species

during the moratorium pending an initial written decision by NMFS on a vessel permit or license application or pending a final written decision by the Regional Director on an appeal.

*LOA* means length overall as defined at §§ 672.2 and 675.2.

*Lost or destroyed vessel* means a vessel that has been sunk at sea or been destroyed by fire or other type of physical damage and is listed on the U.S. Coast Guard Report of Marine Casualty, form 2692.

*Maximum LOA* means a length overall assigned by NMFS for each original qualifying vessel that represents the greatest LOA to which a vessel may increase and continue to participate in the moratorium fisheries during the moratorium. For a vessel with an original qualifying length less than or equal to 104 feet (31.7 meters), the maximum LOA is 1.2 times the original qualifying length. For a vessel with an original qualifying length greater than 104 feet (31.7 meters) and equal to or less than 125 feet (38.1 meters), the maximum LOA is 125 feet (38.1 meters). For a vessel with an original qualifying length greater than 125 feet (38.1 meters), the maximum LOA is the original qualifying length.

*Moratorium qualification* means the privilege of a vessel to fish for moratorium species during the moratorium if the vessel made a qualifying landing. Moratorium qualification may be transferred to another vessel or person.

*Moratorium species* means Pacific halibut harvested from Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska; groundfish species harvested from the Gulf of Alaska management area as specified in accordance with 50 CFR 672.20(c)(1); groundfish species harvested from the Bering Sea and Aleutian Islands management area as specified in accordance with 50 CFR 675.20(a)(7); and king or Tanner crab harvested from the Bering Sea and Aleutian Islands area.

*Original qualifying length* means the registered length of an original qualifying vessel that appears on the most recently submitted application for U.S. Coast Guard Certificate of Documentation prior to June 24, 1992, or State of Alaska documentation if the vessel is not required to and does not have a U.S. Coast Guard Certificate of Documentation.

*Original qualifying vessel* means a U.S. vessel that made a qualifying landing.

*Person* means any individual who is a citizen of the United States or any corporation, partnership, association, or

(B) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed during the period January 1, 1989, through December 31, 1994, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (b)(1) of this section. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

(C) The application for the salvage of a vessel lost or destroyed on or after January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty.

(D) The application for the salvage of a vessel lost or destroyed before January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

#### § 676.4 Exemptions.

Effective from January 1, 1995, through December 31, 1997; the following vessels are not subject to the moratorium and may continue to fish during the moratorium in accordance with parts 301, 671, 672, and 675.

(a) A vessel other than a catcher vessel or catcher-processor vessel.

(b) A catcher vessel or catcher/processor vessel that harvests a moratorium species in the Gulf of Alaska and does not exceed 26 feet (7.9 meters) LOA.

(c) A catcher vessel or catcher processor vessel that harvests a moratorium species in the Bering Sea and Aleutian Islands management area and does not exceed 32 feet (9.8 meters) LOA.

(d) A catcher vessel or catcher/processor vessel that meets all the following criteria:

(1) The vessel is a new vessel that is constructed for and used by a Community Development Plan, approved by the Secretary as part of the Community Development Quota programs under §§ 675.27 and 676.24;

(2) The vessel is designed and equipped to meet specific needs that are described in the Community Development Plan; and

(3) The vessel does not exceed 125 feet (38.1 meters) LOA.

(e) An ineligible catcher vessel or catcher/processor vessel that is engaged in the IFQ sablefish and halibut fixed

gear fisheries in accordance with regulations at subpart B of 50 CFR part 676 that retains an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents less than 20 percent of the aggregate amount of sablefish and halibut in round weight equivalents on board.

#### § 676.5 Permit issuance procedure.

This section is effective from [Date 30 days from date of publication of final rule in the Federal Register], through December 31, 1997.

(a) *Groundfish permits.* (1) A vessel owner that intends to harvest Gulf of Alaska or Bering Sea and Aleutian Islands management area groundfish from January 1, 1995, through December 31, 1997, must apply for and be issued a moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division, P.O. Box 21767, Juneau, Alaska 99802-1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by §§ 672.4 and 675.4;

(ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel, which is specified on the permit application, does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. All permits issued by NMFS will list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at § 676.6.

(b) *Crab permits.* (1) A vessel owner that intends to harvest king and Tanner crab fisheries in Federal waters of the Bering Sea and Aleutian Islands Area from January 1, 1995, through December 31, 1997, must apply for and be issued a crab moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division,

P.O. Box 21767, Juneau, Alaska 99802-1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by § 671.4;

(ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel that is specified on the permit application does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. A permit issued by NMFS will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeals section at § 676.6.

(c) *Halibut Licenses.* (1) A vessel owner that intends to harvest halibut in waters in and off the State of Alaska from January 1, 1995, through December 31, 1997, must apply for and be issued an unrestricted vessel license from the International Pacific Halibut Commission. An unrestricted vessel license will be issued if:

(i) The vessel owner submits a complete vessel license application to the International Pacific Halibut Commission as required by part 301;

(ii) The vessel has made a qualifying landing; and

(iii) The LOA of the vessel specified on the license application does not exceed the maximum LOA. An unrestricted vessel license issued by the International Pacific Halibut Commission will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If the IPHC determines that the vessel does not satisfy the requirements of (c)(1) of this section, the vessel owner will be issued a restricted vessel license applicable only for International Pacific Halibut Commission management area 2A or 2B. If the applicant is issued a restricted vessel license, the applicant may submit additional information to NMFS within 45 days of issuance of the restricted license. NMFS will review that additional information submitted and notify the vessel owner in writing

**SUPPLEMENTARY INFORMATION:****Background**

Although West Coast salmon stocks experience annual fluctuations in abundance, stock abundances in the last few years have been exceptionally low. The ocean salmon fisheries off the coasts of Washington, Oregon, and California are dependent almost entirely on chinook and coho salmon. For chinook salmon, ocean catches fell from a high of 2,121,999 fish in 1988 to a record low of 444,000 in 1992, an almost 80 percent decline in abundance in only 4 years. The 1993 ocean catch of 532,999 chinook was also very low relative to historical averages. For coho, the decline has been even more dramatic, with an ocean catch of 5,334,255 fish in 1976 falling to a record low catch of only 292,000 in 1993—a 95 percent decline. In 1994, the abundances of many coho stocks are expected to be the lowest on record, and are not expected to meet spawning escapement goals, even without any ocean salmon fishing. Most chinook stock abundances also are predicted to be at very low, even record low, levels of abundance.

Salmon fisheries in the ocean waters off Washington and northern Oregon are closed in 1994. Remaining salmon fisheries in the ocean waters off central and southern Oregon and California are at reduced levels and are closed to fishing for coho. It is predicted that 1994 ocean salmon landings will amount to only 289,000 chinook and zero coho. Although fishing seasons for inside (non-ocean) fisheries have not been completely finalized, they are expected to be the most restrictive ever imposed in many areas.

Despite increasingly stringent management measures enacted in recent years to protect these salmon stocks, they have reached a critical stage of depletion, due in part to environmental conditions unfavorable to salmon survival that include: (1) An extended drought in California; (2) less than normal snowpack throughout the western United States; (3) drought

followed by extensive flooding in the State of Washington; (4) and an extreme El Niño ocean warming event during 1992–1993, which is believed to have been responsible for extremely poor salmon survival.

**Impacts on the Industry**

The Pacific Fishery Management Council estimated that, as late as 1988, there were about 5,300 commercial salmon troll vessels fishing off the West Coast, compared to about 2,300 vessels in 1992—a decline of 57 percent over that period. NMFS' Northwest Region conducted an analysis of economic models that suggest that the 1992 West Coast salmon industry involved 8,400 full-time work years. However, much of the employment is part time, so that the total number of individuals impacted by this resource disaster is much greater. Commercial salmon fishermen earned \$33.8 million, while marine recreational anglers spent \$79.5 million fishing for West Coast salmon in 1992. In 1992, 140 West Coast processing plants processed 72 million pounds (32.7 million kg) of finished salmon products, worth approximately \$170 million. These plants employ over 2,000 people for the processing of salmon and other West Coast fish.

**Proposed Agency Action**

For the reasons set out above, the Secretary has declared that a natural fishery resource disaster exists under section 308(d) of the Interjurisdictional Fisheries Act of 1986 (IFA), as amended (16 U.S.C. 4107). The Secretary has asked the President to transmit to Congress a request for \$12 million to assist those persons affected by the West Coast salmon fisheries disaster.

The IFA authorizes the Secretary to award grants to "persons" (defined as individuals, corporations, partnerships, trusts, associations, or other nongovernmental entities) engaged in commercial fisheries impacted by a natural fishery resource disaster, with the following conditions:

1. Eligibility for a grant shall be limited to any person that has less than

\$2 million in gross revenues annually, as determined by the Secretary.

2. A person may receive a grant under this subsection for up to 75 percent of any uninsured commercial fishery loss resulting from the fishery resource disaster (to the extent that such losses have not been compensated by other Federal and state programs), but shall receive no more than \$100,000 in the aggregate for all such losses suffered as a result of the disaster.

NMFS intends to develop specific implementing regulations governing the award of the proposed grants. Section 308(d) of the IFA requires the Secretary to establish appropriate limitations, terms, and conditions for awarding grants, including provisions specifying the means by which an applicant must demonstrate claimed losses and limiting the aggregate amounts that may be paid to persons affiliated with each other or under common ownership. Such limitations, terms, and conditions are to be established after there has been notice and opportunity for public comment.

NMFS is seeking comments from the fishing industry regarding the design of an assistance program that will alleviate economic hardship, including a program that would reduce future levels of fishing effort for resources covered under the Disaster Declaration. NMFS is considering compensating fishermen who relinquish their state fishing permits for the lost value of their permits as a result of the fishery resource disaster. Given the pivotal role of the States of California, Oregon, and Washington in regulating the coastal salmon fisheries, NMFS would need to work closely with these states in designing an effective program. Although government entities are not eligible under the statute to receive assistance, NMFS also is requesting comments from Indian tribes, state fisheries agencies, and any other interested parties. Specific comments and recommendations are requested on the following questions:

**FISHING VESSEL OWNERS' ASSOCIATION  
INCORPORATED**

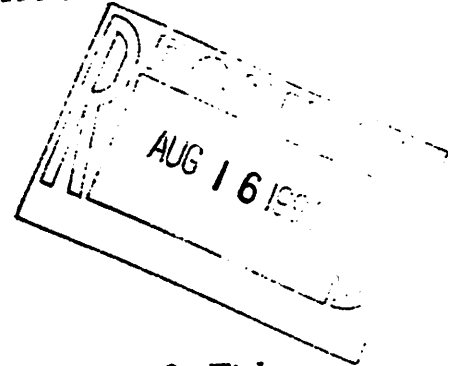
AGENDA C-1(b)  
SEPTEMBER 1994

ROOM 232. WEST WALL BUILDING • 4005 20TH AVE. W.  
SEATTLE. WASHINGTON 98199-1290

SINCE 1914

August 10, 1994

Mr. Steve Pennoyer  
Regional Director , NMFS Alaska  
P. O. Box 21668  
Juneau, AK 99802



Dear Director Pennoyer:

*This letter is in regards to your turn down of the North Pacific Fishery Management Council's moratorium. Today is my last day as a Council member and it was with great dismay and concern that I read your letter concerning the disapproval of the moratorium.*

*The moratorium, even unapproved for the last three years, had achieved the mission it was intended to address, that being stopping new vessels from entering the groundfish, crab, and halibut fisheries. During the debate on the moratorium, it was acknowledged that the moratorium did not address movement of the qualifying fleet between fisheries, such as, crabbing versus trawling or longline versus crabbing or whether harvesting vessels should be allowed to become processors. There were many elements to the crossover issue identified, which the Council left unresolved for future debate within the context of a comprehensive limited access regime.*

*I am concerned that in order to address the issues of concern, which you have laid out in your letter of August 5, 1994, the Council will be required to allocate a significant amount of staff time to prepare the proper analysis in order for the Council to take final action. I would suspect that the changes you have suggested, such as the crossover issue, will delay any action on a moratorium for two to three meetings. I do not believe the initial analysis for the moratorium nor the public record is sufficient to act on all the crossover issues that would need to be addressed. I assume we cannot just pick and choose which crossover issues we want to address. According to your letter, we are in violation of National Standard 5 with regard to crossovers. I would assume that this violation is true of all crossover issues, not just crab versus trawl. Your concerns for a new qualifying period surely is not a simple October Mr. Fixit project.*

FAX

(206) 283-3341

LATITUDE: 47° 39' 36" NORTH

DIAL "A VESSEL"

(206) 283-7735

LONGITUDE: 120° 22' 58" WEST

*From my perspective, your turn down of the moratorium will lead to the moratorium being shelved in favor or some amended version of the State of Alaska license program. My reasoning is that if final action on a moratorium will take several meetings to complete, why not just wait and enact the State's plan in April? If the NMFS ever wanted an ITQ program analyzed, I suspect your turn down of the moratorium may well have compromised an ITQ option.*

*I do not believe the public and industry are receiving a reasonable product from the Council for a rational solution to over-capitalization. The State plan comprehensively compartmentalizes the harvesting fleet and fails to address fishing power; on the other hand, I do not believe ITQ's for every species of groundfish and PSC is enforceable or can be practically accomplished at this time.*

*Your turn down of the moratorium, I believe, has the potential of politically fracturing the industry, invites new entrant issues, and impedes industry to work to some solution. Much of the common ground for debate between the gear groups and processors, up to this time, has been that all parties, were negotiating from status quo, that was presumed to be the moratorium.*

*My recommendation to you and the Council, at this time, is to take only those actions in October that can be supported by the existing record and resubmit the moratorium to the Secretary. If this means that crossovers are resolved through future debates of the State of Alaska option or some future ITQ program, then that should be acknowledged as acceptable. I would caution that even though the moratorium does not address crossovers, just one more 250' to 300' factory trawler would be equivalent to adding 18 to 25 small harvesters. The same situation applies to more catcher processors for crab or longlining. The crossover issue is an issue that should be resolved in the context of the Council's comprehensive rationalization package, and not forced upon the Council at this time.*

*Sincerely,*

*Robert D. Alverson  
Manager*

*RDA:cb*

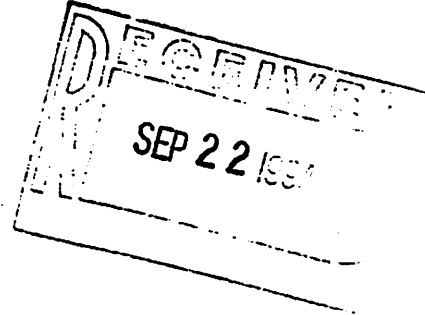


# North Pacific Fishing, Inc.

4039 21st Ave. W. #201 ■ Seattle, WA 98199  
TEL: (206) 283-1137 ■ FAX: (206) 281-8681

September 22, 1994

Mr. Rolland Schmitten, Director  
National Marine Fisheries Service  
1335 East-West Highway  
Silver Spring, MD 20910



**RE: Secretarial Disapproval of North Pacific Fisheries Moratorium**

Dear Mr. Schmitten:

In 1992 the North Pacific Fishery Management Council forwarded three plan amendments to the Bering Sea and Aleutian Islands Groundfish and commercial King and Tanner Crab, and Gulf of Alaska Groundfish fishery management plans. These three amendments (23, 4, and 28 respectively) were collectively known as the Moratorium. Their intent was to limit new entrants to the federally managed fisheries of the North Pacific. The Moratorium was the result of long and hard consensus building between groups which wanted restrictions of varying strengths or no restrictions at all. For the past two years the Moratorium has been under review by NMFS Alaska Region. The industry, having been placed on notice of the plan, has since abided by its restrictions. Our own company canceled plans to construct a new vessel in anticipation that the Moratorium would not allow the new vessel to be licensed to fish.

In January of this year, The Council once again affirmed its support of the plan by recommending that NMFS forward the Moratorium to the Secretary of Commerce for approval while the Council works on a license limitation system as a second step toward creating a Comprehensive Rationalization Plan. The license limitation plan was intended to be a refinement of the Moratorium which addressed concerns not solved in the Moratorium but for which a consensus could not yet be achieved.

On August 5th, Mr. Steven Pennoyer, NMFS Regional Director for the Alaska Region, acting on behalf of the Secretary of Commerce, disapproved the Moratorium citing its failure to address certain details regarding "crossovers." While Mr. Pennoyer did not specifically define the meaning of "crossover" he indicated that it included crossing between Bering Sea Groundfish, Gulf of Alaska Groundfish, and Bering Sea Crab fisheries. Whether participation in fisheries targeting on specific species categories managed under a single management plan or the use of different gear types on a vessel would also be considered a "crossover" was not addressed by Mr. Pennoyer. The Regional Director also cited apparent conflicts with National Standards 4, 5, and 7 having to do with fairness and administrative efficiency. The plan was returned to the Council with instructions to solve the crossover problem and provide more equity analysis so that a revised Moratorium could be put into place next year.



The issue of crossovers is far reaching and would be better solved while developing a license limitation system. By requiring the Moratorium to meet the performance goals that the Council intends to meet with a license limitation system, the Department of Commerce prevents the Council from completing even its first step toward limiting effort in the North Pacific. The Council arrived at the three-step process of handling Comprehensive Rationalization specifically because it could not, though a political process, solve all of the fishery managers' concerns with one mighty stroke of the pen.

To illustrate the complexity of the "no crossover" issue, I bring up my own experience. Our trawl vessel which has been modified to target bottomfish, and which has been harvesting and processing bottomfish for several years, was originally constructed and engaged in the Bering Sea crab pot fishery. Due to the cyclic drop in the crab stock we chose to employ the vessel in the more abundant groundfish fishery. I have no doubt that in the future the crab resource will once again return to abundance while many groundfish species will become less abundant. It seems that a logical conservation measure is to encourage vessels to do exactly what I did: target on abundant species and leave the less abundant species alone. Under Mr. Pennoyer's suggested "no crossover" provisions I may do well to return my vessel to the crab fishery to ensure my ability to participate in both harvesting methods. This of course would have a negative effect on the crab resource but would be necessitated by the proposed regulatory process. As you can see from this example, the development of a "no crossover" provision would be difficult for someone standing in my shoes. I can well imagine there are other complications which will arise in the minds of other fishermen. By raising the performance standard of the Moratorium, the Secretary of Commerce wipes away all of the benefits which would be derived from the Moratorium while prolonging the process of limiting new entrants to the fishery.

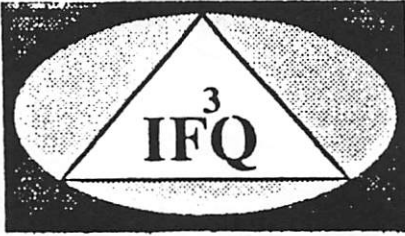
Given that the Alaska Region took over two years to disapprove the Moratorium, and given that all along the way the industry was told that the package was almost ready to be sent to Washington D.C., I am disturbed by this sudden change of direction. In its decision, the Department of Commerce seems to be intentionally disrupting the stability of the fisheries by removing the one agreed-upon limit to harvest capacity. I urge the Department of Commerce to consider the difficulties of obtaining consensus on difficult issues before disapproving future traditional management measures that enjoy such broad support. I also strongly recommend that you reconsider this action on the Moratorium and approve it so that the Council may continue its work without revisiting old issues.

Sincerely,



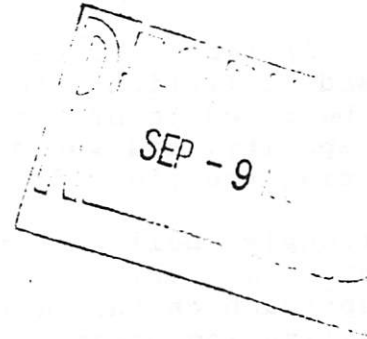
Rudy A. Petersen  
President

cc: Mr. Richard Lauber, Chairman, North Pacific Fishery Management Council  
Mr. Steven Pennoyer, Regional Director, NMFS Alaska Region



## INDEPENDENT FISHERMEN FOR FAIR QUOTAS

2442 Northwest Market Street #349  
Seattle, Washington 98107  
Phone (206) 782-0770  
Fax (206) 391-8105



August 25, 1994

Mr. Steve Pennoyer  
United States Department of Commerce  
National Oceanic and Atmospheric Administration  
P.O. Box 21668  
Juneau, AK 99902-1668

Re: Moratorium Disapproval

Dear Mr. Pennoyer:

It is with great dismay that we received news of your disapproval of the Amendment 23 to the FMP for the Bering Sea, Amendment 28 to the FMP for the Gulf of Alaska, and Amendment 4 to the FMP for Crab fisheries in the BSAI area.

While we agree that the moratorium had flaws regarding cross overs that would allow for the potential for additional fishing boats entering the fishery, we viewed these Amendments as a stop-gap measure until the Secretary adopts Individual Fishing Quotas (IFQ'S) for these fisheries. When the Council acted on June 24, 1992 to impose a moratorium, the moratorium included all current participants as of the date of the Council action. It was contemplated that the Secretary would review this prior to the end of 1992 and the vessel moratorium would become effective beginning in 1993 (see attached newsletter). Instead, the Secretary takes over 2 years to reject the Amendments, for among other reasons, that the plan does not adequately analyze current participation! How can the Council ever adequately analyze current participation when it takes two years to review Council action? Even though there has been much delay, the concern that the moratorium would exclude current participants in the groundfish fisheries is misplaced. We do not know of any current participants in the groundfish fisheries who would be excluded.

You made a convincing argument on just how weak the moratorium amendments would be in achieving a sensible, comprehensive

Mr. S. Pennoyer  
August 25, 1994  
Page 2

rationalization. We believe that these same arguments apply to a licensed limitation program. We concur that these approaches would be a waste of time, would do nothing to control fishing over capacity, and would do little to enhance the achievement of optimizing the yield from the groundfish and crab fisheries.

We strongly believe that a better choice would be to begin developing an I.F.Q. program for groundfish and crab and placing this approach on the fast track. It is the only comprehensive rationalization program alternative that adequately addresses the requirements that you cite:

Enhancing the ability of the industry to achieve optimum yield from the groundfish and the crab fisheries.

There must be an actual decapitalization of the fishing industry before this goal can be achieved. Individual fishing quotas should be awarded on a fair and equitable manner based upon a fisherman's historic participation in the fisheries. This will lead to great efficiency in resource utilization. The Council, however, has sidetracked Individual Fishing Quotas.

In light of the current lapse in the moratorium, and because neither the National Marine Fisheries Service nor the North Pacific Fisheries Management Council has made a serious effort to respond to the task of fisheries rationalization, we support returning to the status quo and urge the National Marine Fisheries Service to reject any proposals to renew either the inshore/offshore allocation scheme or the community development plan when they sunset in 1995. From a harvester's point of view, inshore/offshore has created a monopoly of processors offering ever lower fish prices. Community development quotas have resulted in a significant reduction in the catch levels available to catcher boats. Clearly, in both of these cases, these allocations have favored the few and disenfranchised the many.

We are extremely concerned that what appeared to be a non-controversial stop-gap measure to have a moratorium in place until I.F.Q.'s were established, took two years to be reviewed, and then was ultimately rejected. The controversial license limitation course currently being pursued by the Council will lead to an even greater scrutiny by the Secretary and even greater delay of any serious Comprehensive Rationalization Program. Therefore, we ask that you publicly reaffirm that the Secretary will not approve the reauthorization of

Mr. Steve Pennoyer  
August 25, 1994  
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Inshore/Offshore or C.D.Q.'s unless a fair and equitable I.F.Q. program is passed by the Council and that license limitation will be rejected. You should reinforce your advice to the North Pacific Council that their proposed license limitation program is a lengthy time consuming detour that should be stopped and the Council should return to the task of developing a fair and equitable IFQ program based upon historic participation in the fisheries. Until then, access should be open to all.

Yours truly,

Individual Fishermen for Fair Quotas

Robert L. Watson President

[Signature] Board Member

[Signature] Alt. Board Member

Robert T. Czesler Board Member

Ronald K. Peterson Vice-President

J. E. Hall Board Member

[Signature] Alt. Board Member

RTC:asw

cc: Board of Directors

cc: North Pacific Fishing Management Council  
Enclosure

# Midwater Trawlers Cooperative

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SEP 19

September 13, 1994

## MEMBER VESSELS

AMBITION  
ARGOSY  
BAY ISLANDER  
BLUE FOX  
CAPE FALCON  
CAPE KIWANDA  
CARAVELLE  
COHO  
EXCALIBUR  
EXCALIBUR II  
HAZEL LORRAINE  
LESLIE LEE  
LISA MELINDA  
MARATHON  
MISS BERDIE  
MISS LEONA  
MISS SUE  
NEW LIFE  
OCEAN SPRAY  
PACIFIC  
PACIFIC CHALLENGER  
PACIFIC FUTURE  
PACIFIC RAM  
PEGASUS  
PERSEVERANCE  
PERSISTENCE  
PIONEER  
RAVEN  
ROSELLA  
ROYAL AMERICAN  
SEADAWN  
SEEKER  
VANGUARD  
WESTERN DAWN

Senator Mark Hatfield  
711 Hart Office Building  
Washington DC 20510

Dear Senator Hatfield:

Recently Midwater Trawlers Cooperative sent to your office letters from the Cooperative to Secretary of Commerce Ron Brown and the Director of NMFS, Rollie Schmitt, protesting an adverse ruling in July, 1994 against the North Pacific Fishery Management Council recommendation for a moratorium on new entrant vessels to the groundfish and crab fisheries in the NPFMC area of jurisdiction. We protested this strongly and bitterly as it is, in our opinion, simply one more attempt by NMFS to enact the policies it wants rather than those recommended by the fishery management councils.

You will also recall we have sent similar letters protesting other decisions by NMFS which did not carry out the recommendations of the councils and/or, in our opinion, violated the FCMA of 1976.

We heard from all of the Oregon congressional delegation expressing their interest and attention. **This letter is a strong request that the entire Oregon Congressional delegation take action on the resolution** that we and all of the undersigned fisheries associations request. The attached memorandum and resolution succinctly detail the actions of the National Marine Fisheries Service Alaska Regional Office in failing to treat a major fishery management problem. Let me add that when the moratorium was being analyzed and discussed in 1991 and 1992 the Regional Director, Mr. Steve Pennoyer, did not at any time indicate that the proposed moratorium gave him any great trouble. **He did not warn the Council that its prospects for acceptance were in doubt.** He simply refused to take action on it for two years and then rejected the moratorium after industry members publicly called him to account at the April 1994 NPFMC meeting.

Those of us in the industry in Alaska have been struggling for a long time to attempt to control overcapitalization.

Overcapitalization is also supposedly an NMFS objective. But how can any of us in the industry or on the Council family work in good faith with a government agency that will offer no objection at the time of consideration for a Council recommendation, then sit on it for two years and then reject it?

The Council recommended moratorium had from the moment of its recommendation a constraining effect on the industry. The building boom was over. Very few if any orders were given to shipyards for new construction. There were quite a few reconstructions allowed under the Council's moratorium plan. What should be borne in mind is that the moratorium had its desired effect. Even before passage of the moratorium new vessel construction stopped.

By rejecting the NPFMC moratorium recommendation NMFS's actions will open the whole race for added capacity again if not challenged. That is why we have come together and are asking you and the Congress to pass this resolution. The Secretary of Commerce, NOAA and NMFS must be forced to act by the mandate of Congress as laid down in the FCMA.

I will be only too glad to answer any questions. Would you please work with your colleagues in the Washington and Alaska delegations to bring about this resolution and require the Secretary to accept the moratorium and to stop the destructive race of overcapitalization of the Nation's most important fishery.

Cordially,



R. Barry Fisher

c: MTC Board of Directors  
Rick Lauber, Chairman, NPFMC

September 9, 1994

**A RESOLUTION RECOMMENDING AN ACT OF CONGRESS TO COMPEL IMPLEMENTATION OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL APPROVED VESSEL MORATORIUM FOR THE GULF OF ALASKA & BERING SEA ALEUTIAN ISLANDS GROUND FISH FISHERIES, THE BERING SEA ALEUTIAN ISLANDS KING AND TANNER CRAB FISHERIES AND THE HALIBUT FISHERY OFF THE COAST OF ALASKA**

The fishing associations and other representatives of the North Pacific groundfish, crab and halibut fishing industry listed below this resolution, urge the Washington, Oregon and Alaska Congressional Delegations to implement a vessel moratorium off the coast of Alaska for groundfish and halibut and in the Bering Sea Aleutian Islands for king and tanner crab.

The vessel moratorium was negotiated by the North Pacific fishing industry for more than two years and initially approved in June of 1992. This supporting resolution is to illustrate the continuing broad base of support for the moratorium as the necessary first step to curb overcapitalization and to begin rationalizing the fisheries.

NMFS disapproval of the moratorium two years after the NPFMC action is essentially due to the agency's failure to act in a timely manner in providing the NPFMC with appropriate legal guidance.

The fact remains that widespread business decisions were occurring routinely, based on the moratorium and its limitations. Northwest financial institutions discontinued loans for major vessel conversions and construction of new vessels over two years ago.

However, with the disapproval of the moratorium, shipyards are again negotiating speculative contracts for not only lengthening and widening of vessels, but for construction of new vessels. If another round of reconstruction and new construction is allowed to start, the ongoing process of rationalizing fisheries off the coast of Alaska will be severely disrupted and probably delayed for several years.

Given the widespread national and international recognition of fleet overcapitalization being a root cause of decline and depletion of fisheries resources, the compelling need to enact legislation is evident.

The attached memorandum provides the rationale for this resolution and the proposed MFCMA language to implement the vessel moratorium.

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## LIST OF SUPPORTING ASSOCIATIONS AND COMPANIES:

Midwater Trawlers Cooperative:	Barry Fisher, President 503 265 9317/503 867 6143
Alaska Crab Coalition:	Arni Thomson, Exec. Dir. 206 547 7560/206 546 5222
Fishing Vessel Owners Assn:	Bob Alverson, Exec. Dir. 206 284 4720
Deep Sea Fishermen's Union:	John Bruce, Exec. Dir. 206 783 2922
United Catcher Boats:	Brent Payne, Exec. Dir. 206 282 2599
Alaska Draggers Assn.	Al Burch, Manager 907 486 3910
Alaska Groundfish Data Bank:	Chris Blackburn, Director 907 486 3033
American Factory Trawler Assn.:	Joe Blum, Exec. Dir. 206 285 5139



**MEMORANDUM**

**Subject: Statutory Approval of the Vessel Moratorium for the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Fisheries and Bering Sea/Aleutian Islands King and Tanner Crab Fisheries**

By a letter dated August 5, 1994, the Director, Alaska Region, National Marine Fisheries Service, notified the Chairman of the North Pacific Fishery Management Council that the Secretary of Commerce had disapproved the vessel moratorium for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish, the Bering Sea/Aleutian Islands king and tanner crab fisheries, and halibut fisheries off the coast of Alaska. The Council had approved the vessel moratorium in June 1992 and clarified the measure in August 1992 and January 1993. The Council justified the vessel moratorium as a means to constrain the continued growth of already excessive harvesting capacity, pending the implementation of measures for comprehensive rationalization of the affected fisheries. The Secretary disapproved the vessel moratorium on the basis of his finding that the measure violated provisions of the Magnuson Fishery Conservation and Management Act and the Administrative Procedures Act.

By Act of Congress, the Secretary may be compelled to approve the moratorium, notwithstanding his finding. The enactment of the following language would have that effect:

"Notwithstanding any other provision of law, the Secretary shall, by no later than October 15, 1994, implement the Proposed rule, published at 59 Federal Register 28827, June 3, 1994, (Limited Access Management of Federal Fisheries in and off of Alaska), amending 50 Code of Federal Regulations Parts 671, 672, 675, and 676."

Although the vessel moratorium might be substantively improved by an Act of Congress, there are practical difficulties associated with any undertaking of that nature. The Congress may well be inclined to compel the approval of a measure that has been the product of extensive public comment and Council consideration and approval. However, the introduction of elements that have not been approved through the administrative process of the Council could raise difficult questions for the Congress, which it should be noted, has not had the benefit of public hearings on the proposed legislation. Consequently, it would appear to be prudent to accept a result that has as its sole objective the avoidance of damage which would result from failure to implement the Council-approved vessel moratorium.

Transcription of Council Discussion on Resubmission of Moratorium  
NPFMC Meeting  
September 28-30, 1994

September 28, 1994, Tape 11:

(I have not included the formalities of requests to be recognized, nor the Chairman's recognition of each speaker)

Rick Lauber (Council Chair): I asked Marcus (Hartley) to come up because we've had a number of questions regarding numbers of vessels and what happens if this happens, and so forth, and I suspect it's going to surface during the debate, so I thought you might as well be right there on the ready in case we want to ask any questions. So, let's start off that way, if you have any, but then they'll still be available to answer any questions. . . yes, Mr. Pereyra.

Wally Pereyra: Mr. Chairman, and I don't know whether to address this to Ms. Lindeman, Counsellor, or whether it should be addressed to Mr. Pennoyer, but, if we were to go tighten up the moratorium to January 1, 1988, would that preclude us from going farther back than 1988 if we got to an ITQ program, would we be able utilize historical information prior to '88, would we still be able to do that? . . . or this only moratorium-specific we're doing now?

Lauber: That's the UCB proposal?

Pereyra: Well, the AP's recommendation of January 1, 1988 to February whatever, '92, my question was if we went ahead and adopted that, would we then preclude ourselves from using historical information in an ITQ program for purposes of giving credit for catches and so forth.

Lisa Lindeman: Mr. Chairman, no it wouldn't preclude the Council from going back further to consider earlier catch history; again, it would have to be justified as to why you were doing that, but you wouldn't be precluded, no.

Pereyra; We always have to do that anyway. Thank you.

Ron Hegge: I guess, to Mr. Pennoyer. In your letter refusing or rejecting the moratorium you reference the public comments, issues raised during Council development of the proposed amendments and the documents submitted by the Council, and public record. And yet we've heard testimony here today that the response to the Federal Register was not negative to the extent that I thought when I first read this letter. Certainly, at the time that we passed the moratorium there was total support for what we did, one of the few times we saw people joining together to accept something, and I guess I would like a further clarification on what basis you actually found these reasons to reject it.

Steve Pennoyer: Mr. Chairman, I don't know what you mean, Ron. The fact that public comment may have favored or not favored is not the rationale for accepting or rejecting necessarily if it violates National Standards in your opinion. It's not weighing or taking a vote in the public comment is not necessarily the way you reach that type of decision. The decision, the reasons given, the reasons it was rejected are given in there which basically had to do with the amount of participation that could accrue into these fisheries compared to the current situation by using the extended qualification period and allowing unlimited crossovers, and that doesn't relatively say so-and-so said this or so-and-so didn't say it, it basically was the Secretary's judgement that . . . [Tape changeover]

**Tape 12:**

[some words lost in tape changeover]. . . crossovers or by retroactive participation of people that might not have been in the fishery for eight years, but the . . . vessels that might not have been in, excuse me.

Hegge: Well, the testimony here today, and certainly the observations around the fleet is that this great influx of boats has not occurred; the number of vessels that we spoke of possibly coming in has not come in--the moratorium is working; it was working well, in the degree that we passed it, and I see the disruption that could occur by putting it out, by reconsidering. I'm also very concerned about the things that even the AP has suggested here are not the type of things that we could have passed in Juneau . . . but there was a lot of disagreement over this moratorium. We went a long time before we got one that everybody accepted. And the one that we accepted did not have these elements that the AP has put in it, and I think if we do put those back in there, as evidenced by the people that testified, you're not going to have the support for a moratorium that we did when we passed this one; and you are going to have to back through a period of looking at it, allowing public comment, and virtually starting over.

Pereyra: Mr. Pennoyer, if we were to adopt the AP's recommendations 1-5 and then proceed to fast-track this, Mr. Alverson made some comments that we would have the opportunity at the December meeting to request, or to agenda the item for any further public comment that might come forward. After we receive that, and if we so chose, could we recommend modifications and have those be adopted in the final rule?

Pennoyer: If you time submission of something such that the comment period for any type of an amendment overlaps the Secretarial public comment period, then I think the public and the Council can comment to the Secretary. But you don't then draw it back during that comment period and re-? with it or something. You may make a comment that based on what you've heard, your comment is that you recommend the Secretary doesn't accept what you sent in, or change it in some fashion. But at that point it's not under your control anymore. You can't just modify it, take it back and resubmit it.

Pereyra: No, but we can make comment. . .

Pennoyer: You can make comments, you could probably ask the public to make comments, and make comment based on that; but I think it's comment to the Secretary, not to the Council, at that point.

Robert Mace: Mr. Chairman, I don't know whether we're ready to proceed with this, but my preference would be to proceed on an individual segment basis and end up with a broad motion that would urge implementation without delay of a revised document that we think could pass the Secretary's review, and I am going to **move that we use January 1, 1988 through February 9, 1992 as the qualification period, with the provision that anyone who has fished from 1980 to 1988 would be considered for crossover.** And if I have a second, I'd like to speak to that.

Lauber: Is there a second?

Alan Millikan: Second, for clarification purposes.

Pennoyer: Can I ask for a clarification on the motion before you explain it?

Mace: Yes, I have moved that we utilize January 1, 1988 through February 9, 1992 as a qualification period with the provision proposed by Steve Hughes that anyone who fished from 1980 to 1988 would receive consideration for crossover privileges.

Pennoyer: Mr. Chairman, I think it's probably not a consideration for crossover privileges, they would just be eligible . . . [unintelligible, 2 people talking at the same time] . . . for whatever fishery they . . . across the time period.

Mace: Yes, if they had fished, say in two different fisheries.

Pennoyer: So, it's not future or prospective crossovers, you would get a permit for what you actually participated in during that time. [Mace: Yes.]

Mace: Now, I think that we have to give these people that have been long-time participants in the fishery credit and as we go down the line and if we do get into the IFQ program, that consideration of 1980 participation forward would be of some value to them and a lot of those JV boats, for example, lost markets when the Japanese were forced out and they couldn't find a market on shore, but they were traditional and historical fishermen and I think we need to consider those and that was the main basis for my motion.

Pereyra: I certainly have some sympathies along the lines Mr. Mace raises. There's two questions that come to my mind as a result of this. Number one, is the analysis that we have seen sufficient in breadth and so forth to allow us to make these kinds of adjustments. That's one question. And the second question was, if we were to adopt that motion in its entirety it would seem to me that we'll be non-responsive, we'll be totally non-responsive to the Secretary's basis for rejecting the moratorium in the first place based upon the crossover issue. Now, I don't know if just doing the 1988 to 1992 date, changing that is sufficient to make him feel comfortable enough to approve it. I don't know that, but that's something we probably can't guess, but it certainly means that we're being non-responsive to the crossover issue and I still would like to know if we have sufficient analysis to justify doing that.

Mace: Very appropriate, Mr. Chairman. That's a trial balloon and I think we need to hear from Mr. Pennoyer.

Lauber: That's appropriate, he had his hand up; he wanted to be heard.

Pennoyer: I'm not sure I wanted to be heard in response to whatever it was Mr. Pereyra said, but I guess I can try that. I think the question was whether we had the analysis to do it and could go forward. You're probably asking the wrong person; Marcus is probably going to have to tell you the numbers, but it seems to me the proposal by Mr. Hughes is intermediate between the 1980 and '92 and 88 to '92 process. It does allow for capturing catch history, but the only qualifiers would be those people who actually were still recently and currently in the fishery, currently being defined as the dates just prior to the time you passed the moratorium, '88 to '92. I would guess that the numbers fall somewhere intermediate to those two options and it does restrict prospective crossovers, so Marcus is going to have to tell you if he can come up with something approximating the numbers, but it's in between two things you did analyze previously; you did analyze '88 to '92, you did analyze '80 to '92, so it's somewhere intermediate of those two without allowing for future crossovers. It provides for eligibility but not for crossover. I had one further question on the motion, while I'm at it, and that is, the AP also recommended dropping halibut, well, Mr. Hughes I think recommended dropping halibut out, and that is a very large number of vessels that might qualify for groundfish permits if you don't drop it out.

Mace: Mr. Chairman, as I pointed out earlier, I proposed doing this step by step, and I would imagine the second motion would involve the halibut issue as well as the other two points raised by the AP.

Pennoyer: We'd amend the main motion then, you're not just going to take one . . . you want an amended total motion? O.K.

Mace: Well, I'd like to consider this particular motion that I made and then if we want to consider removing halibut, that's a separate item, a separate discussion.

Lauber: Marcus, can you answer our question that came up regarding the '80-88 area?

Marcus Hartley: I think I would confer with the Regional Director with that. It would be somewhere in between. We have the numbers of vessels that fished both in groundfish and crab or in crab only or groundfish only, for each of those moratorium periods and we know how many of them fished in crab during one period, so it will be within the numbers that we have certainly. The number of total vessels that qualify is certainly known and capped, but the exact number, no, we don't know that.

Pereyra: Mr. Chairman, if I may have a follow up? It's almost as if you've been getting coaching from Tom Casey towards being evasive to my question. I still want to know whether or not, in your considered judgment and maybe in the considered judgment of Mr. Penmoyer, that we have sufficient analysis to allow us to go forward with this. I don't want to see this thing coming back for some reason that says, 'well we didn't have enough analysis,' because then I've got a real problem there.

Lauber: I thought the answer was yes.

Hartley: As an analyst I wouldn't have any problem with saying that's within the bounds of the analysis.

Pereyra: Is that sufficient?

Clem Tillion: Mr. Chairman, I understand and I'm going to support your amendment, Mr. Mace, but why not . . . that was the one that was controversial; 1, 2, and 3 of the AP's, of the halibut and sablefish . . . replace the appeals process was also non-controversial and the retaining of the dates; why not roll those. . . I'd like to make a friendly amendment rolling 3 together with your amended version of 4 and do it on a single motion.

Mace: Mr. Chairman, I'm not sure that the halibut was non-controversial and that was my point and if you want to amend this, fine, and plug in the halibut, fair enough, but . . .

Tillion: Oh, no. It was unanimous.

Mace: It wasn't unanimous with respect to the testimony that we had.

Tillion: But I'm talking about the AP. The first three were unanimous, or one of them with only one objection.

Mace: Well, you can go ahead amend if you want . . .

Tillion: Well, I didn't want to offend you on it . . .

Mace: No, you're not going to offend me; I'm not easily offended.

Tillion: Then I would moved to amend the motion. . .

Lauber: Mr. Rosier, were you trying to seek recognition a minute ago? No? O.K.

Hegge: Well, I guess this motion deals to some degree with crossovers. First, I'd clarify that when we passed this I probably would have supported a no-crossover clause. But you talk about analysis, I don't think we analyzed at all the possibility of no crab season in talking about crossovers, or maybe the possibility of no trawl

season or something like that. Crossovers were a real controversial thing when we discussed this, and now we're coming up; with very different circumstances trying to deal with it on a very fast track and I'm nervous about it, I'll be honest with you.

Lauber: Your motion would take the '88 to '92 as when one would have had to have fished, but basically it's the UCB proposal. . . But if you did that, then you could go back and use fisheries history from 1980 forward up to '88 and if you were the crab fisherman, had fished for groundfish, then it would be all right; but if you had not, you would be out. I just wanted to make sure that's clear.

Tillion: In some part, Mr. Hegge's remark, I can see the problem. I think the moratorium as we're passing it will address that problem of people that are caught in the bind with the closure, that would have fished it before. If you're talking about a new fisherman rushing over to a fishery he's never fished before and thus distressing that fishery as the one that he was just squeezed out of, all you're doing is compounding the problem. We've got to have the door shut; that's what we're attempting to do, that's why the Secretary sent it back. All I wanted to do is what I thought was a friendly amendment to Mr. Mace's motion. . . is add those first 3 that were unanimous by the AP. Otherwise, I think that the modification made by Mr. Mace which goes halfway to what you're talking about is a good one. It kind of splits and makes a compromise.

Pereyra: I second Mr. Tillion's motion to amend.

Mace: I'll accept it as a friendly amendment, how's that?

Pereyra: Oh, you did . . .

[Mace: Just now]

Clarence Pautzke: Mr. Chairman, what did he add? Could I have him repeat that, please?

Lauber: What did you add?

Tillion: The first 3 of the AP's recommendations: Number 1, the AP voted unanimously to remove halibut and sablefish from the moratorium since both fisheries now come under an IFQ; Number 2, the AP voted unanimously to replace the moratorium appeals process with the appeals process incorporated in the halibut/sablefish IFQ program; 3, a motion to retain February 9, 1992 moratorium eligibility cut-off date carried 15 to 2, that's almost unanimous, and so those are the three that I rolled in with Mr. Mace's motion in the interest of saving us some time.

Lauber: That's been accepted in the original motion with the. . . will you accept that, Mr. Mace?

Mace: Yes.

Lauber: All right, now where were we here. Mr. Rosier.

Carl Rosier: Thank you, Mr. Chairman. I have a question in regard to Bob's original motion, speak about the period '80 to '88 and giving credit for participation in one or the other or both fisheries during that period of time and I don't have any problem with that. The issue of crossovers, though, rose after 1988 if I'm not mistaken, which we had the larger vessels coming in; they came in under the moratorium, so we've got a group large vessels coming into the crab fishery after 1988, are they included in this at the present time?

Pautzke: The eligibility for crab or groundfish would go under the Hughes motion, from 1980 through February 9, 1992. That would define which fishery you're eligible for, IF you met the 1980 through 1982 in-or-out criteria.

Mace: But if you didn't fish. For example, now you're fishing for groundfish. If you didn't fish for crab between 1980 and 1988 you aren't going to cross over. If you did fish for crab during that period, you can cross over. That's what the motion . . .

Pautzke: '92.

Mace: Yes, well, '80 to '92.

Pereyra: I'd like to make another motion that we fast track this motion, we fast track the moratorium and that we agenda the item for further discussion at the December meeting if necessary to make recommendations to the Secretary for any additional modifications we might like to suggest.

Lauber: What you're asking us to do is to send it and . . . you may very well be right, Mr. Millikan [couldn't hear his comment], but let me clarify what he said.

Pereyra: This is an amendment to the motion.

Lauber: . . . you're saying to fast track and so forth, it would not come back to us for action; it would come back for us so we could make comments to the Secretary, and that's an amendment to the motion, to be added to the motion. Is there a second to that?

Mace: Mr. Chairman. That's a good idea. My thought was to do that after we passed the nuts and bolts of this, at which time we could speak to Steve Pennoyer and legal counsel and ask if we have responded to their concerns. We've got one more concern, considering from 1992 on, but I think we can do that vocally, but my thought was that we would pass these 4-step proposals and then a blanket move to fast track this thing.

Pereyra: That's fine.

Pennoyer: Mr. Chairman, a clarification, then. Mr. Mace, you said 'dealing with '92 on,' but your motion did include no crossovers after '92, is that correct?

Mace: That's true, but your letter pointed out that we did not consider fishermen in the last two years and somewhere we've got to get on the record where we stand with that issue to resolve your concern.

Pennoyer: Mr. Chairman, I completely agree, I just wanted to make sure we both were talking the same thing. The other question is, I think it's O.K., for Marcus to tell us he can do the analysis, but I think he needs to tell you before you take action, at least generally, where that's going to fall so you know about what you've done in terms of the number of vessels by fishery, by taking this action. Right now we're somewhere in between the 80-92, forget the crossover thing, we're somewhere between the '80 to '92 eligibility period with just the whole thing, and the '88 to '92 eligibility period. We've reached back to allow people to qualify for crab or groundfish,, but they still have to have fished from '88 to '92; so, Marcus, I think you need to tell us, qualitatively at least, within the . . . it is within the range of the analysis because it's in between two things you analyzed, but sort of where in between?

Hartley: Well, I'll make an assumption. . . maybe I won't. If you're talking about crossing over between groundfish and crab, with Bob Mace's proposal, a maximum of an additional 28 vessels would be given crossover privileges under that proposal. Eligibility to cross over, now that's only between groundfish and crab; if halibut

is still in the fishery and I don't know whether it's your intent to take it in or out, perhaps a thousand additional vessels would be given crossover privileges to cross over from groundfish and halibut that wouldn't be allowed to do that. Now, I don't know if all of that number would qualify under the '88-92 fishery; I'm assuming that that's very much a maximum and that most of the difference will be in a lack of a change in the qualifying period rather than in a difference in the way they fished before, if that's clear.

Pennoyer: One follow up. I hate to bring it up, but we've been again reminded just before this meeting that final actions to go to the Secretary need to be in writing before we take action, so if you're to the point of voting a final vote on this, I think we need to take a five-minute break and let Helen get us a rough draft of what's included.

Mace: Well, a thought on that, if that's going to be the case then I think we'd better plug in Wally Pereyra's suggestion and have just one motion, the whole thing rather than have to stop and . . .

Lauber: You want to accept that as a friendly amendment . . .

Pereyra: I so request that as a friendly amendment.

Lauber: O.K., accepted by both? All right, now we have incorporated the Pereyra fast-track, expedited review, I think is the term, but in any case, it is incorporated in the motion. Before we . . ., well, let's see it in writing then we can continue the discussion. Counsellor, do you have a comment?

Lindeman: Mr. Chairman, I have a question as far as the Council's intent and I don't know if I should ask here, I'll ask it and then you can say later. Clarification for the record whether or not it is the Council's intent to allow State-registered vessels that fish only in State waters to receive a federal moratorium permit or eligibility, and if that's the case, then the Council might want to put some rationale in the record on that as to why you would want to provide moratorium eligibility to State-registered vessels that fished only in State waters, not in the EEZ. And then, I have a question if it is the Council's intent, whether or not that would mean that whether or not a state-registered vessel that fished only in state waters could sell its federal moratorium permit and continue to fish in State waters, so that a vessel would also be allowed to fish in federal waters.

Mace: Mr. Chairman, here we need Marcus or someone to tell us how many vessels, State vessels that didn't have a federal permit landed groundfish. Do you have any idea? What's the magnitude of that catching pool?

Pautzke: I don't think we have. . .

Lauber: Very difficult. . .

Hartley: Mr. Chairman, that was not included in the earlier analysis. We made the assumption that all landings of groundfish, with the exception of sablefish, in explicitly managed fisheries were included in the moratorium and we haven't examined the number of vessels that only fished in State waters.

Lauber: The other side of that coin is, if we excluded those vessels who are fishing a federally managed fishery and counts against the TAC, what would be the . . . seems like they would have one heck of a case. . . I realize that's not the question you raised, you just want us to justify this and say, are we doing this, but it comes to my mind, how can we not do this; seems like they would have a big case against us.

Tillion: Yes, I'm caught (?) the same way you are, Mr. Chairman, but I never contemplated nor intended that the federal moratorium privilege would be subdivided from the fishery that took place in State waters. If you fished



a TAC-regulated fishery you have a single moratorium privilege. If you exercise it in State waters, so what? I don't believe they should be divisible. I think that a person should have to sell their right to fish, period. You can't leave them out; like he said, these people have been doing it.

Penroyer: Mr. Chairman, those are two separate questions but they're not completely separate because they give rise to the problem we've got in jurisdiction and what you can and can't do. The concept of allowing people who delivered groundfish to keep delivering groundfish and to make them do it under the moratorium makes some sense in terms of all fishing on the TAC, that's the justification you've brought in before. It's a common TAC, the State's mirroring our closures even if they don't have to. By the way, I might mention a couple of cases they haven't always, we got in a bit of a problem on black rockfish one time. It wasn't a big deal, but still they aren't always the same, so the State does retain the right to not mirror our closures. But, even if you did that, then the question that Lisa raised is still correct--what do you do with a guy in State waters who sells his federal moratorium permit that allowed him to fish in the EEZ and keeps on fishing in State waters? If you're going to make them indivisible, you're basically admitting to some form of preemption to make it legally binding to that. I'm not exactly clear mechanically how that's going to work.

Tillion: Well, if you have a single TAC on cod and we shut down, which we always have, you're fishing out of a common TAC pool; we can't leave those boats out and just say that you're SOL, you've got to include them. I, too, would not like to see them subdivide their privileges. In other words, if they're fishing under the TAC, they're fishing under the TAC, but I don't know how we got out of this; we passed the moratorium a long time ago and that was included.

Lauber: It is an interesting point. A person theoretically, as I understand it, Counsellor, you could have a case, a person who has fished totally in State waters, or it wouldn't necessarily mean that they would have had to, fished totally in State waters; we give them a moratorium permit, federal; they never intend fish in the federal waters, so the guy all of a sudden has something that is of value and says, 'fine, I'll sell it,' and then continues life as usual. How do you stop that person from doing that under the existing law? That's the question that's raised and it's different from the point that we were making earlier that I don't see how you keep them out once you do this, but

...

Rosier: Seems to me you've got the reverse if you look at a vessel that's only fishing in the FCZ. Can he sell his federal permit then and come into the State waters and fish? You've got a . . .

Pereyra: Would it be possible for the State to pass a regulation that requires that any vessel that fishes in State waters on federally-managed resources has to have both a State permit and a Federal permit? Could the State do that?

Tillion: Well, whether the State could or not, you'd still have to take it to the Board, but the big problem, the big differential has been not size or anything else, but the mandatory observers and so that's the only advantage people got fishing inside State waters. Otherwise they thought they were fishing under the same TAC as anybody else, and were, 'cause the State shut it as soon as the Federal shut it. How do we write it so that the TAC is the guiding instrument, not where they are?

Lauber: I think it's a good time to write up the motion.

Tillion: I think it's a good time to take a little break while we figure how to get out of this hole.

[Evidently, Council decided to break until next morning; there's nothing on the tape and the next one is already into first part of Lauber's opening statement]

September 29, 1994, Tape 13:

Lauber: . . . We have before us the written form of the Mace motion as friendly amended numerous times (Attachment 1 to this transcription). Anybody want to talk about it?

Hegge: I've got a couple of things, but on #1, [unintelligible]. . . pretty much, certainly it helps the moratorium, but the fact of the matter is that halibut and sablefish hasn't really passed the court challenge yet and I wonder if we can somehow add wording that it would be removed contingent upon withstanding court challenge.

?: Second.

Hegge: I guess I did speak to it in that; it is ready to be implemented, however it must pass the court challenge and if it does successfully do that, then it would fall out, just like the wording here but we certainly can't take the chance of leaving those fisheries unprotected [interrupted, couldn't hear what he said] . . . the moratorium. . .

Lauber: We would remove halibut and sablefish when they are under an IFQ program?

Pautzke: When both fisheries come under an IFQ program.

Hegge: That'd be fine.

Lauber: Is there any objection to that amendment? Hearing none, it passes. Anything else?

Hegge: Well, I guess I'd have one more. Probably easier, too. I would move to delete #5.

Lauber: Is there a second to the amendment?

Behnken: Second.

Hegge: I think that this is probably something that back when we passed the moratorium, well I know it's something that we attempted to do when we passed the moratorium. We didn't have votes to do it at that time, there was not the consensus among the industry that we could deal with crossovers. I think that to add this in at this time is just wrong. I guess deep down I'd like to do it, but it's not right to do it now. The things have changed, the crab fishery has no fishery this year, it can be dealt with in whatever we go with, license limitation or IFQs, and I just don't believe it's necessary in this moratorium. It unfairly penalizes a very few vessels who in all other respects complied with our moratorium and it's to me straying from what we passed and the industry accepted.

Lauber: From my understanding, if your amendment passes, crossovers between groundfish and crab would not be restricted but, because of #4, would be confined between January 1, 1988 and February 9, 1992.

Hegge: It would be confined to the vessels who have been assuming as everyone else has that they were covered by the moratorium, that they qualified with the moratorium by having fished groundfish or crab in those qualifying years. They have operated in the last three years under the impression that they were under the moratorium, that they were qualified. They conducted their business in that manner and with that assumption based on what we on this Council and the National Marine Fisheries Service have put forward and to now come in and tell them that they weren't qualified is wrong, and that's the basis for my motion.

Lauber: Does that differ from what I said?

Hegge: Probably not, but you're so much better at saying it than I am, that I take a lot longer.

Lauber: Well, all I wanted to make sure is. . .I'm trying to make sure of my understanding of the effect of the. . .what would be different than we originally sent in. The difference basically would be we'd be moving the eligibility date from 1980 into 1988.

Hegge: Yes, we'd certainly shorten the period. We would reduce the . . .

Lauber: . . .the number of vessels that would be. . .those vessels, however many there are, that would be eligible because of fishing in that 80-88 time frame would be excluded.

Hegge: Yes, they would.

Rosier: It seems to me that we are dealing with a situation, we're kind of changing the rules in midstream here and I think that there are vessels that complied with the moratorium as they understood it, vessels that have in fact crossed over since the effective date and I think that those vessels would continue but I think that we're going to have to deal with that particular issue not under the moratorium but under a comprehensive rationalization plan, and it just seems to me that the rights of those people that operated under the moratorium as they understood it in 1992 is extremely important at the present time and to make a change in those rules, it's my belief that we're looking at further analysis, we're going to get further delays, and it's a situation at which we simply can't afford to do that with some the important issues before this Council at the present time.

Pennoyer: First of all, I think, I don't like to re-phrase it again, but I think what the amendment proposal is, is to grant unlimited crossover privileges to anybody who fished between 1988 and '92, so it's not just the few people who quote crossed over in '92 or '93 under a regulation that did not exist, I might say--there was no law; it's everybody. So you're prospectively allowing the whole 4,000 some-odd vessels, whatever it is even though it's a lesser number than the original number, which went from '80 to '92, to quote cross over and you're not simply taking into account the 29 or 30 large trawlers who converted to crab in 1993, which by the way is something we see happening in the other direction, not allowing more people to convert into crab. So, I'm not sure how the amendment either resolves the problem pointed out by the Secretary of Commerce, or even takes into account your concern for the very few vessels that might have done this activity in '92 or '93.

Pereyra: While I certainly have sympathies with what Mr. Hegge's proposed and what Mr. Rosier supported here, my concern is that we have to make changes to this moratorium that we've put forward. The Secretary rejected it and the Secretary rejected it on two accounts and one of them was this crossover provision and I'd just like to read that in the letter we received it said under this provision, which was the original one we had which had unlimited crossovers, which is exactly what Mr. Hegge's amendment would do. "Under this provision, a substantial number of vessels could enter either fishery for the first time under the crossover provision, thereby exacerbating the overcapacity problem in that fishery in confounding the expressed objective of the moratorium to freeze the number of vessels in the groundfish, crab and halibut fisheries." That having been said, my concern is that we had this moratorium rejected and I don't want to put in jeopardy the possibility that we may not have this date in place and a moratorium in place that would freeze capacity. I'm afraid of getting this whole package rejected and opening it up wide open and I think that's what we're setting ourselves up for, so I can't support the motion even though I might have some sympathies along those lines, I cannot support it.

Mace: I'm going to support the motion if I'm assured that those people who in good faith have crossed over between '88 and '92 will not be hampered, and I think that the amendment does that and so I plan to support it.

Hegge: Well, this is more in response to Mr. Pennoyer's comments. Again, at the time we implemented this moratorium we talked about stopping crossovers and for whatever reason, with a slightly different Council, we couldn't accomplish that. There wasn't the support either amongst the Council or the support in the industry of a moratorium that stopped the crossovers. And what we did very emphatically was draw a circle around the fleet that existed. It was a bigger fleet, we'd cut down the size of that fleet, but we said that we were drawing a circle around that fleet, that more wouldn't come in but that those in there could move, could adapt, as we went through the process of comprehensive rationalization. Now, we're attempting to change those rules and I think that's wrong. It may not accomplish what we'd like to see, but it's not supposed to be the final product. We're going through comprehensive rationalization even though it might be slower, we still have to stay on the track that we began on.

Lauber: Under the motion, I guess I'm kind of referring to Wally's comments, but from what we had originally passed, if this motion passes, including your amendment, wouldn't there be substantial reductions in the number of vessels? Number one, striking the halibut and sablefish as eligible, that was thousands of vessels, and then striking those vessels, however many there are, that would be eligible because of fishing in 1980 up to 1988, however many that would be, so there would be a substantial number of vessels that wouldn't be involved or eligible to participate in a crossover, they just wouldn't be eligible.

Hegge: That's correct.

Behnken: My comments were along the same line, that #1 has already addressed the concerns that Mr. Pereyra has raised to a large degree by cutting the fleet to 4,000 vessels and it seems to me that really where the moratorium was headed was trying to control harvesting capacity, not just numbers of vessels, and by making that cut I think it brings somewhere close to 80% of the vessels left in under the moratorium are under 60 feet and probably not the vessels with really high catching capacity that we're worried about. So, #1 really addresses those concerns without the contentiousness of dropping a bunch of people out that have made some significant investments thinking they were going to be able to cross over into other fisheries.

Pereyra: With regards to what we have done and the number of vessels removed, this is sort of a similar situation where if you looked at the total number of people that have been on this earth, maybe it's 12, maybe 15 billion, I don't know the number, but it's a big number, and if you went ahead and were able to have some sort of a divine law that said that anybody that's in the ground and is dead can't come back, it's not really going to have much of an impact on the total number of people we have on the face of this earth right now. And that's really what this moratorium does. If you look at the statistics, by what we've done right now, all we're going to be doing is eliminating 21 vessels larger than 26 ft, I think. I think this is what the data shows. The numbers of vessels that we're eliminating that are presently in the fishery is pretty small, but what the moratorium does if you put in a crossover provision, is to prevent large-scale shifts from one fishery to the next, which is where your real impact can come from. It also, I think, the moratorium reduces the number of dead hulls that can be resurrected at some point in time. But, I think if we pass this particular amendment, it's a pretty weak moratorium and I really don't think it's really going to accomplish that much.

Millikan: I can't support this amendment either because it seems to me that if somebody in the 12 years from '80 to '92 hasn't fished in one fishery that suddenly they should be allowed to fish in that; I don't think that's appropriate. I think that we all know that during the latter years the vessels are bigger and more efficient, more powerful. To allow those vessels a chance to cross over into a fishery that they've never fished in before, I think really increases the overall problem with overcapitalization and too much effort and I think that anything we can do in the way of preventing that in terms of a crossover provision we should include. But, by allowing this crossover we would be derelict in our duty of reducing overall effort, so I'm going to oppose the motion, the amendment.

Pennoyer: I fully understand the comment about people, whether it's legal or not because there wasn't a law in place, to go ahead and change fisheries in '92 and '93, I understand that concern, but what you've done is quite different and you've opened up crossover between these fisheries to unlimited crossover by even larger vessel size classes and it sort of comes back to are you going to treat these fisheries separately or not. Most of the discussion I've seen has talked about the overcapitalization in the groundfish fishery and the crab fishery and even our license limitation and other programs seem to treat the fisheries not as one big aggregate of 4,000 vessels in the North Pacific, but rather a crab fishery and a groundfish fishery with even some divisions within that later on. And, I think what you have done with # 1, is you've taken care of a lot of, as Ms. Behnken said, the cosmetic effort of reducing numbers of boats in this thing. But, they're all the small vessels. The capacity issue is not there with those vessels. So, #1 takes care of the numbers game, to get down from umpteen thousand vessels under 60 feet to a lower number, but it doesn't address the capacity issue. The capacity issue is largely addressed, some by the time period you choose, but largely addressed by the crossover provision and you're not just allowing by doing this, the 30 boats, or 38 boats, or whatever it was that put on pot gear in '92 or '93 to go fish in the crab fishery, which isn't what we want to do anyway, you're letting anybody do it in either direction. And, that's a choice I think the Secretary's letter clearly says is one that causes great concern, so you're specifically addressing just what somebody might have done in '92 or '93 by reading something that wasn't law and acting that way, you're letting anybody do it and I'm not sure a moratorium that treats the whole 3,000 boats as one envelope is all that effective in terms of the effort that's going to be applied to either one of these fisheries, so I'm going to vote against the amendment. . .

Lindeman: Without more rationale in the record, we'd be concerned that approval of a crossover provision would be arbitrary and capricious. And, what I'm talking about is whether the Council could provide a rationale for allowing a vessel that never fished in the fishery to fish in the fishery after '92 while at the same time excluding vessels that fished in that fishery after 1992 and depended on the fishery, or other vessels that also likewise never fished in that fishery, like salmon vessels or scallop vessels, from entering the fishery. And I think there needs to be more rationale in the record other than relying on an FMP amendment that had not yet been approved by the Secretary.

Hegge: Well, two things. If you read our Federal Register notice in dealing with crossovers, "the Council determined that a qualifying vessel would be allowed to participate in all the moratorium fisheries during the moratorium even if the vessel had a reported landing from one moratorium fishery. . ." Well, you can read it. We reasoned the crossovers were not the difficult problem, we were limiting the fleet. On the other hand, in response I guess to Ms. Lindeman's comments, we're making this decision based on a record that was built two years ago. The record that was built two years ago supported making no restrictions on crossovers and, in fact, had very, very different circumstances within the fleet. We had a king crab fishery, we had a trawl fishery, both overcapitalized, but we had fisheries. That record had nothing to do with the lack of a king crab fishery, it would have been a very different outcome had we put that information in there. In fact, I guess it wouldn't have been different; we couldn't get a limitation on crossovers with it in there, so saying what the record supports, the record is based on very different circumstances and we just can't come in now and make another determination.

Tillion: Having been one that opposed crossovers back when, it's rather frustrating now. But given that these investments were made in good faith in accordance with the moratorium rule, and you say it hadn't been adopted, but it worked very well because the fleet could not get loans from banks nor make investments with an action that had been passed by the Council and was being held in Juneau, because at any time it could become the rule and they had had notice and therefore, whether it was adopted as it was turned down, they had no way of knowing. It worked just as if it had been adopted. It seems clear that the individuals involved had a reasonable expectation of continued participation. To retroactively eliminate them now seems like an appropriation that would warrant compensation. The recent opinion from NOAA on that. I feel very awkward arguing that these people should be allowed when I originally didn't want them, but the thing is we'll have to move on with a decent rationalization program to get those 30-40 boats that have made the switch and to leave them with nowhere to go just doesn't

seem quite fair. If we can get the dates and we can get rid of the halibut/blackcod fleets, I think that's all we can be expected to do. I certainly don't want to look at something that we have to come back at another meeting and chew this head of cabbage all over again. I want to be done at this meeting, send it to the Secretary and have that done so that we can get on with a reasonable rationalization program.

Pereyra: I think the Counsellor raises a very interesting question. Certainly, it's difficult to support an argument that says that a crab vessel that has never fished in the groundfish fishery can go ahead and because of overcapitalization in the crab fleet, a difficult situation, move into, let's say, the cod fishery, while a scallop vessel which may be suffering in the same sort of resource-induced overcapitalization pressure in terms of what the resource can provide, cannot go into that cod fishery. That is I think a difficult argument to get around and something I think we have to keep in mind. I think what our Counsellor is telling us is, again, as I said before, is we're setting ourselves up to have this moratorium rejected if we have this very liberalized, well it's really a non-crossover amendment, accepted by the Council.

Mace: I agree with Clem Tillion. I don't think that we can legally or morally restrict these people that have crossed over in good faith between 1988 and February 9, 1992. I think the key point here that we are overlooking is the cut-off date. We cannot realize a rationalization program without restricting growth and I believe that advertising February 9, 1992 has had a substantial impact on the growth of the fleets in the Bering Sea and the Gulf of Alaska. I'd hate to predict what position we'd be in now if we hadn't advertised that date. I'm convinced that we stopped a lot of capitalization. I think that we are threatening our whole process by not getting this date through and getting it through very promptly. I think that what we're doing here is we're looking toward rationalization. We're trying to make decisions on rationalization which are going to come later. We don't know what direction we're going; we may go to IFQs, we may go to license limitation programs, but right now the thing we want to do is get a cut-off date and I don't think that we can jeopardize that any longer. If we don't do that, we're going to have a problem here that is going to be unsolvable.

Millikan: If I had any hope that comprehensive rationalization, true comprehensive rationalization was on the near horizon, I would certainly accept the comments I heard from Mr. Tillion and others because it really is unfair in some ways to exclude boats that have sort of bet on the come, if you will, and crossed over subsequent to the cut-off date. But I think the greater inequity and the greater unfairness is to allow a potential vast increase in effort into fisheries that boats have never fished in before by allowing full crossovers and the Secretary's been very clear and I think if I've listened to Steve, he's re-emphasizing that this was a major problem and I think that we are putting at risk the whole moratorium, we are putting at risk comprehensive rationalization if we go ahead and allow these crossovers.

Rosier: I just find it difficult to support the idea of supporting speculation. I think that the Council made it very clear back in 1992 about what their intent was as far as the moratorium was concerned and Counsellor talks about the situation in which it's not fair that came later. I just find it difficult to believe that it's fair to accommodate those that operated under the rules that were in place. I just find it very difficult to support the deletion of those people and not keeping in there because they did operate, they made investments under the rules and because somebody came in and speculated at that point expects to get in because we're going to let the date slide, or something of that nature, I just don't think that's the way we should be going. Mr. Millikan, I think we are moving toward a comprehensive rationalization program; I think we're on a path here with the Council and I think we'll see it; I don't think we're jeopardizing, for one minute do I think we're jeopardizing a comprehensive rationalization program.

Pennoyer: If the interest is in not stopping people who made investments in '92 and '93 from realizing those investments, you're talking about 38, something like that, 38 crossovers quote into the crab fishery by large vessels that put pots. If your interest is to preserve that, then include '92 and '93 as part of the 80-88 eligibility, not crossover, but eligibility. The problem is that by doing what you're doing you don't just include those people,

you include anybody else that wants to crossover quote into the crab fishery if the stocks happen to go up in the next two years. It's not, you're not taking care of the problem you say you're worried about. If you're worried about people who made investments based on a rule that didn't exist, but they did it in '92 and '93, then maybe you do that, those investments were made, for example the biggest investment was probably putting pots on about 38 boats to go crab fishing. If you're worried about protecting that investment, then maybe you do that, but when you do eliminate this whole provision, you don't have eligibility, it's not an eligibility question, you're allowing prospective crossovers to any degree in any of these fisheries for as long as this is the rule that's in place and I think that's the problem. So if you want to take care of that problem that you seem to be most concerned about, then say something like the eligibility period is you had to have fished in '88 to '92, but if you did fish in those years, you're eligible for a moratorium fishery in any fishery that you prosecuted between 1980 and 1993. You could do that. I'm not sure how that's all going to play out, but it's something in between opening the door entirely for prospective crossovers and just taking into account those who had already done so under the rule that you had proposed even if it wasn't passed.

Pereyra: I find our discussion quite interesting because as we go further on in the agenda we'll be discussing comprehensive rationalization and one of the cornerstones of our discussions will be a license limitation program which, the way I read it, is quite restrictive in certain areas, eliminating boats from fishing in certain fisheries where they traditionally fished and certain areas and so forth. But that's just an aside. Following along Mr. Pennoyer's reasoning, I think one of the ways out of this box, and I have some sympathy with the fact that people have made investments and have probably crossed over. I think one of the ways out of this box is just to move the crossover date, the present crossover date up to today, for example, just make it September [tape crossover]

**Tape 14:**

Pereyra, continued: . . .September 29, 1994, and then anybody who is qualified in this period, the '88 to '92 period which is what want to look for, vessels that have fished in that period, if they have crossed over in any fishery from 1980 to today, they don't have anything to worry about. That way we will have taken care of these individuals, some of which came up and spoke to us. Anybody in the future, we've already put them on notice that they in fact are not able to cross over into fisheries that they have not fished in during that time period. So, I'd like to offer an amendment to the amendment, if I may, that we change the date from February 9, 1992 to September 29, 1994.

Lauber: Is there a second?

Pennoyer: I'll second for discussion.

Hegge: My argument has never been about the boats that came in after '92. My argument is about the boats that operated under the moratorium that we established that made a cut-off date of 1992, whatever, February. If you read the Federal Register notice, the next sentence is important. "The Council reasoned that restrictions on the ability to cross over into other moratorium fisheries would constrain a fisherman's flexibility during the moratorium and would be allocative amongst different sectors of the industry." This is what we said at the time, this is what we passed. I'm like Clem, I was on the other side of the boat, I would have like to have restricted them at the time, but we went with this, this was the reasoning and these people have operated under that reasoning; they believed it. There's no reason to let people in that violated the moratorium, that's not what we're talking about, we're talking about people that abided by the moratorium. But now we're trying to change the rules after the fact.

Behnken: I think that the change that Mr. Pereyra's proposed is definitely a step in the right direction but I do think that Mr. Hegge's point is a reflection of where we were and saying that a notice to industry, that's been around for two years now, that we were going to allow crossovers, people have made investments. They may not

be in the fisheries, but they may have built boats, bought boats, set up boats, to be combination vessels and may not have entered those fisheries but have every intention to, and that's the . . . moratorium was a closing of the doors, a circling of the fleet as Mr. Hegge pointed out. The purpose of comprehensive is to take the next step, to put those limits on and it's a two-step process. For us to go back now and make those cuts in the moratorium when notice has been to industry for several years, it seems to me a real violation of the attention people pay to this process.

Tillion: I was thinking of comprehensive rationalization. I figure that we will make the cuts on the comprehensive rationalization. We want to make those cuts, those actions that were taken prior to this date, the January 1992, we have given notice in all the studies that we've done on comprehensive rationalization. Many of these people will not get credit for crossovers or will get very little credit for the crossovers. This was a moratorium passed two years ago. The fact that you say it had no legal binding because it was not passed by the Secretary, it had an absolute economic binding because no bank would loan while the Council voted and NOAA had not made up their mind, and therefore it was as much in effect as if the Secretary had signed it. No banker would loan for a conversion under those circumstances, so let's assume that what we're doing is picking the date for the action that we did, making some of the changes that the Secretary wanted, but not all of them. We are going to be moving to comprehensive rationalization, probably first through some limited entry thing, but nevertheless people that made the crossovers are not going to get credit for those crossovers under comprehensive rationalization, or very little credit for them, because we've given notice that we're going to use a number of years, we're going to have a restrictive system that we have given notice for. We have had that in front of us, that we are going to move on comprehensive rationalization. We've had the proposal . . . the State is putting out for sometime; what we're talking about now is are we going to retroactively change that which we gave notice for in '92, and I'd say let's not do it; let's send the minimum back to the Secretary that holds that date, yet get on with our other rationalization programs that try to make sense out of this. We know that a moratorium is not a final solution; let's not debate it today as if it was. It's not. This is just defining the dates that we will use and what fleet we will use to establish our rationalization.

Mace: I need a little discussion, I think, or the Council does, with NOAA Counsel. Mr. Pereyra's amendment to the amendment appears to me to liberalize the crossover provision by adding the period from February 9, 1992 to the current date and it would seem to me to be much more generous than Mr. Hegge's amendment which restricted the crossover to '92 and I'd like to get a response from Counsel on that. They were concerned with the '92 cut-off date and if we're going to increase to '94, why it would appear to me to be more of a concern.

Pereyra: That's not what's happening.

Pennoyer: I think the words "crossovers" is what's doing us here. I think #5 was intended originally to not say "cross overs" but to restrict eligibility to get a license in either groundfish or crab to a fishery actually fished in during these time periods, from '80 to '92. What I think taking that out does, is it leaves the original motion which allows unlimited crossovers, not just vessels that crossed over in '92 and '93. I think what you've done with the amendment by taking #5 out is you're allowing unlimited crossovers to anybody, whether they did in '92 or '93 or never did it could cross over. So, I think you are allowing for crossovers, but that #5 and what Mr. Pereyra's amendment attempt to do is to not have any crossovers. You are simply eligible for whatever fishery you fished in, or both, during the time period from '80 through '94. You had to have fished in '88 to '92, O.K., to even get in. That's preserved your cut-off date which I think is the most important thing the Council has tried to do anyway, and what it does is it restricts your eligibility; the moratorium permit you're going to get to any fishery you fished in between '80 and '94, which does take into account anybody within the last two years; I'm not sure I would have used '94, the last two years, did go ahead and convert. Some of the biggest conversions, by the way, I think were to crab, but so the confusion is crossovers and you're trying to get rid of the conc. . . I think the original motion here, 5, although it says crossovers and I think Mr. Pereyra is where you get over the crossover concept, you're just eligible to fish in any fishery you fished in between '80 and '94. There is no more crossover.



By getting rid of that entirely, you've unlimited crossover, anybody can change back and forth who did qualify between '88 and '92. So, Mr. Pereyra's is a lot more restrictive than getting rid of #5.

Pereyra: I was going to make the same comment. It is much more restrictive. This recent discussion we've been having is sort of analogous to dangling some candy out in front of a baby and then you take it back because in fact we're going to allow unlimited crossovers or eligibility or whatever, you can go into any fishery you want, and then on the other hand we're saying but I'm putting you on record we may take that back, why are we giving it to them in the first place? It doesn't make any sense. You might as well be preemptive in terms of a problem. We're going to create a tremendous problem if we don't have some sort of a restriction on expansion in some of these fisheries because you know as well as I do what's going to happen. People are going to get jammed up in some of these other fisheries and then you're going to come along and say well we decided we aren't going to let you do that and they say wait a minute; you went ahead and you passed this moratorium without any sort of restrictions and now you want to restrict me, I object to that; you're taking from me, and we're going to have a huge brouha here and I think we have to do something to prevent this expansion of crossovers into other fisheries beyond those that people have already fished in and that was the sort of the intent of my motion was to sort of draw the gate right now as far as crossovers or eligibility was concerned.

Millikan: I'm going to support the amendment and I am hopeful that the numbers we've heard relative to the boats that will qualify, will be eligible, is accurate. But I'm somewhat frustrated, I guess, to hear these arguments about what we passed in 1992, because that was rejected and one of the main reasons in the letter from Steve was the crossover provision, very emphatic about that, and if we allow that crossover to continue I think in all likelihood we're putting an arrow in the heart of the moratorium, which is the last thing in the world I want to do. I think it's really impractical, imprudent, to argue well we made this decision two years ago, just because the Secretary rejected it we ought to submit it again even though he's told us forget it.

Hegge: Well, it's funny, the same arguments can be used on both sides. What Mr. Pereyra said about dangling the moratorium that allowed free crossovers in front of them for two years and then suddenly jerking it back is exactly what we're doing. They've operated two years under the assumption, the people that complied in every other way, could cross over. We said we wanted to give them flexibility during this moratorium to adapt, to utilize the fish that was there, and it's going to amaze me if we can at this stage, after all the other scrutiny that we've undergone by General Counsel and open meetings and that, if we can come in here now and so drastically change this, with the only real public comment that, hey, this is really different, if it flies, then I'll be real surprised.

Behnken: One quick comment in response to Mr. Pereyra's statements. I think there's a big difference between a license program or an IFQ program that takes something away or that maybe limits people and a moratorium. Once we have a comprehensive program in place people can purchase entry into the fishery. With the moratorium we haven't given them that option and I think that, as everybody's pointed out, people have made decisions based on a moratorium. We need to stay there. We're two years closer to having a comprehensive program, once that comprehensive program is in place people then have the option of buying into it, of buying licenses, of buying IFQs if the program we put in place doesn't grant that access from the original allocation.

Rosier: I still coming back to the process itself. We have had as with what's on the books at the present time, with the moratorium, a public process that was followed, there was a decision made; it was a decision that permitted crossovers on this; we have now a large group of people that would be impacted negatively, conceivably impacted negatively, from this, and it just seems to me that we're really moving here into the CRP process. It's no longer, we're no longer really talking about the moratorium, we're talking about the comprehensive rationalization program and to my way of thinking we simply do not have the information before us to in fact just put this on a fast track and circumvent the public process as a result of the desire to make these changes. If we're going to do it, then we're going to have to go back and take a hard look at this thing all over

again and put it out for the public to deal with. With regard to Mr. Pereyra's statements here, there may be a brouha over this, but there's probably going to be a brouha if we do make the changes as well, in my view. And so, I again, if we move into the comprehensive rationalization program it appears to me that we've got to do that through the public process and it gives everyone an opportunity to in fact have their say. But we're talking about fast-tracking this and they're not going to get their say in my view.

Mace: I suggest, Mr. Chairman, that we have about a 5-minute stand down; I need a little conferring with . . .

Lauber: No objection to that; take an at-ease here.

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Lauber: The amendment on the floor is a substitute for #5, Wally's . . .

Pautzke: It's to change the date from February 9, to September 29, and then down below we have substitute for #5 which is Pennoyer is going to suggest, I think . . . [difficult to hear; everyone's still talking from the break]

Lauber: Actually, Mr. Pereyra. . .but Mr. Pennoyer apparently has another wrinkle.

Pereyra: Oh, great, I like wrinkles.

Lauber: So, Mr. Pennoyer, then we'll put Pereyra behind you.

Pennoyer: I thank you for that, Mr. Chairman. I'm not sure this is a wrinkle but in reading #5, I don't know what it says and I think it's worded rather strangely, and we may never get to. . .I'm not sure what we're going to end up with the way we're going, but I thought that #5 and actually Mr. Pereyra's motion should read more like what I have down under substitute for #5 and if we ever get back to that point, that would be my recommendation. And what I have there is getting rid of the concept of crossover, but allowing a broad eligibility period which I think was the UCB, United Catcher Boats, motion yesterday. And, it would be to restrict the eligibility to receive a groundfish or crab moratorium permit to those vessels with fishing history in that respective fishery between January 1, 1980 and whatever date you pick. In other words, you had to have fished under (4) between '80 and '92, that's your basic thing, nobody gets in at all that didn't fish in those years. But then you get a permit for any fishery you fished in between, in the broader period, and I think that was the UCB motion; Dr. Pereyra modified it to make it a little later, but that was the UCB motion so if we get back to this, I think the substitute is more reflective of what the motion was, of what was intended than (5) and I would probably offer that when we get to that stage, or maybe Dr. Pereyra will offer it as an amendment to his.

Pereyra: First before we get to that I had a burning question I need to ask Counsellor. In your considered opinion, if we eliminated all eligibility criteria, crossover criteria, whatever, by eliminating (5) and not maybe accepting a substitute such as Mr. Pennoyer's proposed, are we in grave danger of having the entire moratorium package rejected again?

Lindeman: I think that if crossovers are included in the moratorium without more rationale on what I pointed out before about allowing someone who doesn't have a history of landing in a fishery to enter that fishery while excluding vessels that fished after '92 or fished maybe in salmon or scallops, there's a significant risk that it would be disapproved. I can't say absolutely because I don't know what the Secretary's going to do when a revised, if a revised moratorium gets to the Secretary, but we see it as a significant problem and it was laid out in the disapproval letter that it was a problem.

Pereyra: If we could for a moment, let's assume we build a rationale to eliminate the problem of salmon and scallops and the non-groundfish, non-crab fisheries. We eliminate any requirement whatsoever from changing from groundfish to crab, if in fact you're an eligible vessel under this moratorium you can go back and forth no matter what, that's essentially what Mr. Hegge's motion would do. If that in fact becomes the intent of the majority of the Council and that goes forward, are we in jeopardy of having the entire moratorium package rejected for the same reasons it was rejected originally?

Pennoyer: I'm not sure that is a completely legal question. The question she raised was a legal question of fairness. The question of how many's O.K. is a policy call, I suppose, and I would mention that the letter does say under the crossover provision, "a substantial number of vessels could enter either fishery for the first time under the crossover provision thereby exacerbating the overcapacity problem in that fishery and confounding the expressed objective of the moratorium to freeze the number of vessels in the groundfish, crab and halibut fisheries." So, I think that it does allow for a very substantial potential increase in, in particularly the crab fishery. I recognize the stock status and everything and the likelihood of people just investing on strictly on the investment and not any other rationale, from doing it, but it does allow on paper this substantial potential increase in either fishery, particularly crab. So I would say that was a key element that was quoted in the disapproval, was the unlimited crossover potential and that certainly would be a key concern if it came back with that still in it.

Hegge: Mr. Pennoyer, I guess my confusion or something on this is that the moratorium that we passed said that you qualified as a moratorium vessel if you had landed crab or groundfish in the EEZ within the period 1980 to 1988, '92, or whatever it was. It wasn't two moratoriums, it wasn't a split moratorium; you qualified for that moratorium by making a landing of either crab or groundfish, that's as far as it went. What you're talking about now is two moratoriums, in effect. It's a groundfish moratorium and a crab moratorium that may or may not allow you into either one and certainly doesn't allow you access into the other if you don't qualify for both. That's the point that I think we're straying from the record that we built.

Behnken: Just to add to Mr. Hegge's comments. Very clearly the moratorium we passed was a moratorium on vessels and not on what people did with those vessels and the what people did with their vessels was to come under the limited entry program or under IFQs or under some combination of those as we move that direction. I think we took care of some of the Secretary's concern with #1 of this motion, removing the halibut and sablefish fisheries from the fleet, and I guess I'm still a little concerned or a little confused by the question that Ms. Lindeman is raising. If I'm understanding it, the concern about the vessels that have entered from '92 to '94, and what happens to them; they're participants now. But at the time that this moratorium was passed they were future participants, they were speculative entrants, and for us to backtrack and now consider them current rather than future, seems sort of a contradiction of where we were with this moratorium when we approved it, or recommended it to the Secretary. I'm not sure if that clarifies what your question was, or addresses it, but that's sort of how I see that issue.

Lindeman: Just for clarification, and I might be misunderstanding what you just said, but I'm not saying that the Council must include people who fished after '92; I was saying that, with respect to a fairness question and a rationale, I would think that you would need to explain why cutting them out is O.K. when they fished and depended on a fishery for two years or three years while at the same time allowing someone who never fished in groundfish or crab to move into that fishery just because they had fished in another fishery.

Behnken: If I could follow up. I guess the way I see it is that, again, the moratorium defined the vessels, not what they did with those vessels, and the vessels that were in under our moratorium were in with the knowledge that they would be able to fish in this suite of fisheries, including crab and groundfish as of '92. The vessels who came in after that didn't have that knowledge. They were at the time we approved this moratorium, they were future participants, they weren't current participants and it's just because this thing has been held up for two years that they've become current participants, and so that to me addresses that equity question.

Mace: Wow. The key thing in my view is to get a cut-off date through the Secretary, and I've been listening to Mr. Pennoyer and Counsel and I'm . . .if we go ahead with Mr. Hegge's motion and lose it, and there's a good chance of losing it, I think that we're going to be really hurt. I'm wondering, and this is just off the top of my head. We've pointed out, I think, that there are 30 or 40 vessels that were fishing between January 1, 1980 and February 9, 1992, that moved into other fisheries from that point, '92 point, until to date, and I'm wondering if we can't accommodate these concerns by saying that if . . .I'm using Steve's words, restrict eligibility to receive a groundfish or crab moratorium permit to those vessels with fishing history in the respective fishery or fisheries between January 1, 1980 and February 9, 1992 with the provision that those vessels that have that history, that history can be extended for the two-year period between '92 and '94. That would preclude new vessels coming in after '92; it would accommodate the good-faith changes that these vessels made, whatever there is, 30 or 40, between '92 and '94, and it might accommodate an opportunity to get it through the Secretary, I don't know. We're boiling this down to fishing history between 1980 and February 9, 1992 with the stipulation that those vessels that have added or fished other species between '92 and today, September 29, 1994, would still be allowed eligibility for those permits. We've not added any new vessels; we've accommodated, I think, Steve's concern about considering these legal changes that were made subsequent to February 9, 1992, and I'm not sure this makes much sense but I'm just simply attempting to get a closing date through and not jeopardizing our chance to get the Secretary's approval.

Hegge: I guess directed to Mr. Pennoyer. Steve, you were certainly there when we passed this; it was consensus, very strong consensus of the industry, we deliberately did not address crossovers. I realize that there are a number of concerns that you raised in your rejection, or the Secretary's rejection, but is that to say that you absolutely, if the Council did get a majority, would reject a program without crossover limitation, if that was the wish of this Council, based on the record that we built back then and still were acting off of in our vote?

Pennoyer: You're asking for a yes or no at the table and I probably can't give it to you.

Hegge: Well, you're putting us in a position where we need to know, a yes or no. You've sent somewhat of a blanket back on an extremely important issue. We all want a moratorium, the whole industry came together and said they need a moratorium, we're trying to fashion one that each of us, I guess, in our own mind feels represents the testimony that we had and the input and yet we don't want one that's going to be rejected. Is it that specific in your rejection?

Pennoyer: Mr. Hegge, I guess I have to say the rejection was based to a fair degree on, significant degree, on the unlimited crossover provision and the concept that you could therefore increase effort substantially in any one of these fisheries even though you had this ban on new entry to the overall, as you put it, envelope and I guess if you can come back with a really great rationale as to why the overall envelope does something for you that in fact that a moratorium that really only deals with a cut-off date for new vessel construction in any of these fisheries, is a substantial item. Now, don't forget the Secretary may be perfectly in agreement with and sympathetic to your view that you're going to proceed down the track on this thing; the Secretary also has experience with moratoriums that for one reason or another stayed in place for ten years, and a moratorium is not a final solution to overcapitalization. That's recognized, but it is a form of limited entry and it does have to be justified and the fact that this accomplishing some significant factor for us to impose both imposition on the current open access system and to administratively adopt such a program. If you are going to say that [tape changeover]

**Tape 15:**

Pennoyer, continued: . . .the potential on paper of several hundred more vessels or several thousand more vessels entering, for example, the crab fishery is not the concern, the concern is . . .the only concern is new vessel construction in the North Pacific period, including vessels coming from some other part of the country, and you

can rationalize that as an effective measure, then you're going to do something that regardless of how people felt about it was not actually justified well under the original amendment as submitted which talks about freeze-framing the fleet, talks about freeze-framing effort, and capacity is not just capacity for everything in the North Pacific, it's capacity for groundfish, it's capacity for crab. Those are the two biggest separations you've made in every discussion you've had on future limited entry programs or anything of that nature. You've never lumped the two together in the way you did with the moratorium, so I guess to say that regardless of the justification you came up with, the Secretary would not approve something is probably not something I can do, but I would say it's got to be very strong justification 'cause at least on what faced us in the amendment in examining what you might end up with on paper allowed a substantial increase in capacity and effort in the individual fishery. So, I think the answer is still, Ron, that it was a very significant concern; I don't know that you've dealt with it except by resubmitting it and saying that you originally did what was right and that's what you heard and people had a consensus that's what you ought to do. I think you still need to have the rationale for why that's the appropriate way to go.

Millikan: I don't know about the rest of you, but I don't want to take the risk to have a wide open ability to cross over. Looking at Steve's letter, I'm listening to Steve very carefully, we have a vastly overcapitalized fishery in groundfish and in crab and everybody acknowledges that. It's going to be magic if we can provide a strong rationalization to allow an increase in effort. That's one thing I wanted to say. The other question I have about Bobs proposal, Bob, what you're proposing. . . The way you're proposing it, what I see is very simply to leave (4) as it is and for Steve's substitute motion, just add September 29, 1994, I think that would do exactly what you.

Mace: What I would propose, tentatively, to re-word and add to Steve's writing here and say, "restrict eligibility to receive a groundfish or crab moratorium permit to those vessels with fishing history in the respective fishery or fisheries between January 1, 1980 and February 9, 1992, provided that such qualified vessels would remain eligible to receive permits based upon any additional fishing history between February 9, 1992 and September 29, 1994."

Tillion: The problem I'm having here is I don't want to walk us into a trap that when we go to rationalization we then say that these people that made these crossovers have to receive an allocation. I want to hold that date and when we sit down and work out a limited entry/ITQ proposal, that we base that proposal on a date prior to 1992. I don't want to find that I've taken action on a moratorium which to me only holds the fleet from new construction; that then requires that I allow people in that have taken actions after the passage of that moratorium. So, what I'm looking at is the actual limited entry ITQ proposal and how we allocate it. I don't want to find that I've taken action here and I'll listen to Counsel in the months ahead that say but you allowed these people in and sanctified it by changing the date and now you can't do anything about screening them out; the moratorium was merely to stop new construction from coming in. THEN we address the problem of ITQ, and I don't want to find out that some action I've taken on a moratorium lets in all these vessels that did something after the date we gave them, so that's all that needs to be really on the record and know that you can screen them out when you go to ITQ, or at least give them such a small quota for that.

Pennoyer: You have noticed a control date for IFQs anyhow. You're going to have to justify who's in and who's out when you get to the program; it's not something that you can say now. I would point out on the opposite side of the '94 proposal that Mr. Pereyra and I think Mr. Mace both made, by unlimited crossovers you're allowing anybody in that fishery and you're going to have to find out a reason for why they shouldn't have been in there when you get to IFQs anyway. Right now, under your current proposal, not just the people in '92, '93, '94, but '95, '96, '97, whenever, can cross over into the crab fishery and establish a history which you when you get to the right program are going to have to find a way to say this is not appropriate. You've got to re-justify your control date when you get to it. But there's no guarantee any of them are going to get anything and you are on record already that for purposes for IFQ the Council considers June, whatever it is, 24th, 1992 as the date that you will

use as a benchmark. That doesn't establish that benchmark in law. You still have to justify that when you get to the IFQ program, so I would say that Mr. Pereyra's motion is much more restrictive. . . your concern than Mr. Hegge's motion which would allow anybody to cross over during this time period and you're still going to have to justify why to exclude them when you get to an IFQ program.

Lauber: If we think back to the days two and a half years ago when we were working on this, and I agree that at that time we had similar discussions and similar feelings as to what we were attempting to accomplish with the moratorium. Ms. Behnken has touched on this. There really is a couple of philosophies; neither one of them are bad in my feeling. One is that we decided that there should be a limitation. What we came up with was a limitation on the number of vessels. We elected not to engage in a vessel licensing program or an ITQ system at that time. We wanted to freeze the number of vessels, stop new entrants, into the fisheries. We did not intend at that time to stop people from their normal fishing if they wanted to fish in one fishery versus another. Keep this in mind, had we decided in June of 1992 that we didn't want a moratorium there would not have been a damn thing the Secretary could have done about it because the Magnuson Act requires that limited entry such as the moratorium must be initiated by the Council, the Councils are the ones that initiate it. If we had said that we don't want to have a moratorium, the issue of crossovers would have been a moot point. Obviously you could cross over, do anything you want and bring in all the vessels you want, you could bring them from the East Coast, build new ones, whatever. We tried to freeze the number of vessels while we continued to work on a rationalization program for the fisheries. So, I'm a realist, I understand how we have to take into consideration what the Secretary wants, but I don't think that we have to, through a form of, I won't say coercion, but intense encouragement from the Secretary, design the Secretary's plan of what they think an ITQ system should be. Now I have no problem with members of the Council or, as far as that goes, the Secretary, thinking that we should have done more or handled the moratorium differently, such as limited crossovers. But that's not what we elected to do. We elected to limit the number of vessels and that was a substantial move on our part; don't forget that. That was a big stroke, we don't want to lose that, but by the same token, we get down to this and all the amendments and so forth; let's assume that a number of these passes, I think that we're going to have a lot of problem explaining to people how we have modified this moratorium to not allow people to continue their normal fishing operations between 1980 and 1988, take them out, and then we allow a number of vessels that have entered the fishery at their own risk, with notice from us, between 1992 and 1993 and '94, but we take in 1992 and '93, but if we allow them in but take these people who have acted in good faith on the basis they would be allowed to go into other fisheries and have gotten vessels ready and spent money and whatever in order to do that, and tell them, no you can't, but we're going to let these people in who have in effect speculated and entered these fisheries, I think we're going to have serious problems with people out there, in future meetings that are going to come in here with all types of hardship cases that are going to rest on our shoulders because. . .if we're going to do this, and as I say, I think you can make an excellent case for doing more with this moratorium than just limiting the number of vessels. But if we do that, I think that what we need to do, then, is say, O.K., we need to re-think this whole thing and let's start work on it again and start the process and we can fix a date and so forth. But, to just do this based upon the record that, good God this record we're relying upon, is a legal record and I know it'll pass the court test but it's three years old, for God's sakes; hell, I can hardly remember what happened last meeting let alone June of 1992; so, I would like to see us move along but I don't want to cut out people who relied upon what we were doing, and I'm also reluctant to let in people that fished in 1992. They did so purely on speculation and I don't think we should let them in.

Pennoyer: I don't disagree that the concept of the moratorium and the cut-off date is a major step by itself. That is certainly a significant action the Council took. We spent a lot of time arguing about even getting that far; we had several moratoria we put in newspapers and federal registers and so forth that we dabbled around with for about four years under great urging from the industry to do something and when we finally did, of course, we had already had a significant amount of entry in the intervening period of time from when we started talking about it--new vessel construction in the large-size category, so it is a concern, but you're talking about letting people into fisheries in '93 or '92, this doesn't do that. This says you had to have participated between 1988 and 1992

to get in at all. We're not letting anybody new in unless you take the concept of new being in a particular fishery which the Council has argued against in the past. There might be new in crab in '93, and we're allowing those folks that between, if we did Mr. Pereyra's motion, between '80 and '94 that did fish in either fishery, to get a permit for that fishery. But they can't be new vessels, it has to be people who did fish in 1988 to '92, so that's still covered. You're allowing a very broad approach of eligibility to fish in either fishery. I mean, if somebody fished in 1982 in crab then go into crab as long as he fished in '88 through '92, even if it was in groundfish. That's pretty broad; actually that's a lot broader than I would have preferred originally, personally, when we voted on this originally. But that is allowing a lot of latitude toward people who had behaved in a certain way over the recent, or recent in quotes, period of time the Council is considering, to continue operating in that fashion. It just doesn't allow people prospectively to operate in a fashion they have not operated in by crossing over after whatever date you choose. So, you don't allow new vessels to enter the fishery in '93 and '94, fishery being the big umbrella that you talked about. You do allow them if they did it in crab or conversely in groundfish.

Lauber: But you recognize the point I was making, that what we did, whether we all agreed with every part of it, but we finally agreed to, I think unanimously, was that we froze the number of vessels, new vessels, construction, expanding, and so forth, but we didn't restrict people from moving within the fisheries, fully intending to do that at some future time as we worked our way through the comprehensive rationalization program. That's the point that I'm making and I guess it's a difference in philosophy, at least an idea of what we want to accomplish in a moratorium. I have no argument that one is right or better than the other; I can understand people wanting to use the moratorium to be more restrictive, and that's a valid argument. I don't happen to share it; I think we should use the process where we go into far greater detail than we have at this time to restrict people, and during the testimony it's obvious that there are people that are going to be severely impacted if we change what we did by allowing, you use the term crossover, I like the term of allowing people who have vessels to continue to operate in the fisheries as they would have, but just not allow new entrants into fishery. Call it crossover, but that seems to have taken some kind of a connotation that is bad, and all I'm saying is that that's not what we did. We decided to limit the number of vessels, not limit the number of fisheries the vessels could participate in.

Pennoyer: I understand.

Pereyra: I think it's counterproductive for us to be dwelling on what we did and what our intent was. I think the Secretary's come back to us and said that our reasoning was faulty and we could argue with the Secretary but he in fact has got the final vote and he gave us the reasons why our reasoning was faulty and related it to the National Standards and the fact that we're not really doing anything for the overcapacity problem and putting a lid on things by the way in which we constructed the moratorium, so we have I think, upon ourselves to change it. Now, if the Secretary were to come in here and give us his plan for the moratorium, it would be much more restrictive than anything we have on the table, either in the form of the amendment to the amendment that I made or the substitute motion. I'm sure it would say something to the effect, '88 to '92, that's what you qualify and only the fishery you fished in '94 can you actually fish in--something like that to really make it restrictive. We've chosen to make it something that's much more liberal than that, and so I think it's kind of a compromise. Again, Mr. Hegge's approach would just leave the door wide open and I think we've had plenty of discussion on that. The concern that I'm having is that I think that I've inadvertently created a fairly awkward construct of what we're really debating. The debate is, do we go with Mr. Hegge's amendment which is to just reject (5) outright, or do we go with some sort of a substitute motion. So, probably the appropriate thing for me to do is to withdraw my amendment to the amendment and then have a substitute motion to the amendment be offered. I think that would be appropriate way to go, and either vote that up or down, and we move on and so at this point in time I'd like to, if it's all right with the second, to withdraw my amendment to the amendment.

Lauber: Any objection to the withdrawal of the amendment? [None]

Pereyra: And, Mr. Chairman, I'd like to if I may offer a new amendment to the amendment, which would be a substitute motion as put forward by Mr. Mace, and maybe Mr. Mace could read my substitute motion for me?

Lauber: So that we understand, is that a substitute for the whole motion?

Pereyra: No, just a substitute for Mr. Hegge's . . .

Mace: Mr. Chairman, in my infinite wisdom what I'm trying to do is to get a cut-off date, February 9, 1992 through the Secretary and attempt to appease Steve and get something that may fly, and I think that I'll read it. This may do it; if not, well I'll go home: **Substitute for (5): Restrict eligibility to receive a groundfish or crab moratorium permit to those vessels with fishing history in the respective fishery (fisheries) between January 1, 1980 and February 9, 1992, provided that such qualified vessels would remain eligible to receive permits based upon any additional fishing history between February 9, 1992 and September 29, 1994. That adds no new vessels; it accommodates the fishing history that those that have complied with the cut-off date. And that's it; I can't do any more.**

Lauber: Let me clarify. The last part was the '92-'93 numbers. You said that adds no new vessels?

Mace: No, you have to have fished or made a landing by February 9, 1992 before the qualification applied. If you fell within that framework, 1980-1992, then any fishing that you did, up to date, you'd be eligible to receive a moratorium permit for it.

Lauber: So if a person had made a groundfish landing between '80 and '92, . . .

Mace: And in 1993 he fished for crab, well, he could get a permit for crab, if he was in that framework of the dates.

Tillion: In other words what we're going to do is we're going to allow the trawlers that moved into crab in the last couple of years to be grandfathered, but we're going to make sure the crabbers can't move back to trawling now that it's a closed season. . . I agree with one thing with Bob, though, what we're really after is the date for eligibility and no new vessels. That's the only part of this moratorium that I consider appropriate. Otherwise we have to solve our problem with a rationalization program and we don't want to rest on our laurels thinking this has done 75% of it and therefore we don't have to do anything else. This has not done anything but give us a date. We have to now move forward on a comprehensive rationalization, and I'm not interested in sitting here all day and trying to find out how we can almost do comprehensive rationalization with the moratorium; we can't. We have to use this only as a step to fix a date and then go forward with a decent program.

Pautzke: Mr. Chairman, provision #3 here retains the cut-off date as far as whether any new vessels or prospective are going to get in or not--February 9, 1992 is the cut-off date regardless of Mr. Mace's motion. Secondly, the control date that was mentioned earlier by Mr Pennoyer, of June 24, 1992 is still the control date you would probably want to go back to in an eventual rationalization of fishery; that still stands. It's been distributed in a newsletter. It seems to me that all we really need to do if you want to proceed with Mr. Mace's concept here is to substitute September 29, 1994 into the blank spot that is in substitute motion #5 here that Mr. Pennoyer offered, and you would have what you want there as far as a window that you had to meet before, which is '88 to '92, and then vessels that had participated either in groundfish or crab or both would be still eligible for those fisheries based on the history between '80 and '94. That would give you everything that you're trying to get, I think right here.

Mace: As I understand it, you're going to change that '92 date to '94, fill in that blank. That means that anyone could bring in a new vessel after February 9, 1992 and comply.



Pautzke: No. Number 3 controls that; number 3 is controlling on any new vessels coming in that have never participated in groundfish or crab. . .sets the window for any new vessels coming in.

Hegge: I don't see this as an amendment. What this is is establishing a groundfish moratorium and a crab moratorium by the wording of a substitute motion, to receive a groundfish moratorium permit or a crab moratorium permit and I just question Mr. Pennoyer or Counsel if we have the record before us, the input to do this. This isn't a revision, it's a complete new thing.

Lindeman: I think going from the one moratorium on all fisheries to two moratoria on individual fisheries, I think that's within the scope of the analysis, the original analysis anyway, numbers of vessels and . . . I think.

Behnken: But, Lisa, don't you see it as a fairly significant departure from the ground rules that the industry has operated under for the last two years and based their plans on, I'm just thinking back to the numerous conversations I've had with people who have called me saying--I'm thinking of doing this, whether it's buying a boat, changing a boat, not buying a boat, and what is this moratorium, where does it stand and where would it leave me--and explaining it to them and then that they have made their plans based on that. And here we are with some pretty major changes and I'm just really uncomfortable with that. And I recognize that the Secretary has turned back our plan; I just hope that the clarifications. . .the Chairman said it really well; we were setting a limit on vessels; we're now two years closer than we were in '92 when we sent that back to putting the parameters on what those vessels can be doing in terms of the different fisheries they're in, how much they're harvesting, and that's what our moratorium was intended to do; let's do it and get on with it.

Lindeman: All I can say is that under the Magnuson Act the Council recommends proposals to the Secretary and those proposals don't take effect until the Secretary approves them and it's unfortunate it took two years before the Secretary made the decision on an FMP that was recommended by the Council, but under the Magnuson Act these things don't take effect until the Secretary approves or disapproves, whatever.

Lauber: Mr. Tillion covered that, I thought, quite well in the sense that obviously you're correct that it doesn't have the force and effect of law, but it did have a definite dampening effect upon new entrants, people who relied on what the Council did. Now, [tape changeover]

**Tape 16:**

Lauber, continued: [remainder lost in tape changeover]

Pennoyer: . . . [starts in mid-sentence]. . .don't know that you've dealt with it.

Lauber: If I was on the loan desk and I was confronted with a vessel loan and I was aware that the North Pacific Fishery Management Council had voted a moratorium on new entrants in the fisheries, of new vessels, the vote was unanimous, including the Regional Director, there was no objections raised at that time by NOAA General Counsel, and there's no reason to believe that that would not be placed in effect, if I was banker I wouldn't do it and if it was my money I wouldn't invest in a vessel to enter that fishery. It had to have a very, very definite effect upon new entrants. Where I have a problem with Mr. Mace's motion is that, and I can understand, we want to preserve that date, but where I have a problem with it is we're expanding to allow people to enter a fishery that either had the moratorium been approved promptly, they wouldn't have any chance of being in because they wouldn't even be fishing. If it had been rejected promptly, and we had changed it, obviously, if we had acted, say, in late 1992, we wouldn't have added vessels, anybody can get in by 1993 is in--we would have rejected that. I don't think that we can. . .obviously we can do a lot of things. . .I'm not going to vote for it.

Pereyra: This does exactly the opposite. Before, the loan officer had the option to look at a boat as to whether it could go into crab or groundfish or crab-groundfish, groundfish-crab. This says that you can't do that unless you had history during this period of time. So this actually is more restrictive than what we had before which is what the Secretary is telling us we have to do. In terms of new vessels coming in, the control date is exactly the same; that control date has not changed and so that loan officer made a very intelligent decision by not allowing somebody to borrow his money and come into a fishery where he is in fact not going to have the opportunity to continue, so that hasn't changed.

Hegge: A question of Mr. Pennoyer. Do you think that, or do you have any numbers, I guess, on what substantive savings you've accomplished here, because by going back to '88, I mean 1980, you've reallocated the fishermen that have left the crab, gone on to other fisheries, they're back into it, and that's a substantial number; there were a lot of fishermen fishing in those days. You've added the ones that have crossed over since then, the only people that you've eliminated is a handful of crab fishermen who are suddenly constrained by reduced opilio and non-existent king crab fisheries that may want to go into it. I don't see where you've really accomplished significantly the goal that you hope to achieve by stopping crossovers.

Pennoyer: I guess that was a question, and I guess my answer is that I'm not. . .first of all, you reduced the eligibility period to '88 to '92, O.K.; it's not which fishery you can. . .that's the eligibility period over all; you've preserved your cut-off date, you've made that change, you've cosmetically changed the capacity problem by reducing the numbers in sablefish and halibut boats, which I think is still a numbers game, not a capacity game, and you've restricted prospective crossovers which really apply to every vessel in the fleet, so you're talking about literally, and I'm not saying it's going to happen because it certainly won't in this climate, but you're dealing with hundreds or maybe even thousands of vessels because your prospective crossover allows anybody to enter the crab fishery, for example, for the first time at any time in any future year, until you get your new program in place, which at the current time I don't know when that's going to be, so I can't see why you don't say it makes a substantial difference in the prospective amount of effort that could enter either one of these fisheries. Overall, the overall envelope, you're right; I guess the question comes down to whether it's an overall envelope, whether you're concerned about the crab fishery versus the groundfish fishery. Your FMPs are separate, your future plans are separate, so I think you probably are concerned about the crab fishery, not as an overall envelope but as a crab fishery, and I think you have certainly. . .whichever way it goes, I'm not saying it's going to go that way, but if you did this and restricted crossovers, you've restricted a tremendous potential increase in effort in that individual fishery.

Tillion: What I'm looking at now, if we accept Mr. Mace's amendment, do we have to consider those vessels that are in the pipeline as we did before, that are already making the conversion and have made the estimate? Will we end up with it back because it takes further study; we've made substantial changes. I don't want it back. The thing is, how much blackmail is required to be paid to not get it back, I guess we'll have to face, but I really don't like it. What I want is that date, that time, that fleet, and I don't want it back. I think that if you don't consider the pipeline, you've made substantial changes, I think that you're going to find that this amendment has caused enough of a substantive change to require future consideration and I can just see the thing coming back from the Secretary again for doing what the Secretary said we ought to do. We're not going to get an answer on a full-proof system but my feeling is if we just get the control date and the size of the fleet and get it back there, we're going to get it through. Maybe not, but you're doing a lot of conjecture and I'm sure Steve couldn't answer that question even if he was allowed to because you don't know what's going to happen back there. But I'd be even willing to consider sunset dates on the whole darn thing. I want a reasonable resolution of. . .somewhere. . .a rationalization program. This is only a date; the rationalization has to follow quickly behind it.

Millikan: I personally think I've heard enough testimony, argument discussion. I know where I stand on the vote. I think the Council has a moral, I suppose, obligation to send back some sort of a moratorium package that has a high chance of passage. If we do less than that, then we are opening up incredible speculation in the next few

years for boats that want to cross over which may well have significant implications into any comprehensive rationalization package that we eventually, sometime in what I expect to be the not-near future, pass, and we have by our own action encouraged increased capitalization and increased fishing effort. That's not acceptable to me and I don't think that's acceptable to the industry as it exists now. Now whether we leave the February 9, 1992 date or whether we go to September 29, 1994 date to accommodate a few vessels that have speculated absent an official regulation, I'm sitting on the fence. I can live with either one. My primary responsibility, I believe, and my goal, is to see that a package goes back that will pass. We know that the one we sent back before failed, it was too loose. The biggest problem we've heard, both in the letter and from Steve is the crossover provision. Now we've addressed that. We've also addressed the other problem, which was the length of the qualification period, and I think that the proposal that we have before us with either one of the two dates I mentioned, '92 or '94, is adequate and will pass. Less than that, we're putting ourselves at risk. I'd like to vote and pass a moratorium that we can live with.

[several calls for the Question]

Rosier: I'll make it quick. It seems to me that the thing that has been missing in this whole process that's been the slow movement, I guess, in terms of the comprehensive rationalization program, going the next step. We're a lot smarter today than we were in 1992 when the original moratorium was in fact adopted. It just seems to me that two years hence we're going to be a lot smarter in terms of the issues that are before us at that particular point in time. I don't know what the appropriate time is here on this, but it seems to me that if we're going to go ahead with a moratorium that in fact meets at least some of the concerns of the Secretary on this, then I think we have to kind of hold our own feet to the fire in terms of a date in which the moratorium sunsets. During that specific period of time, then, we have to move ahead on the comprehensive rationalization program and at the appropriate time, Mr. Chairman, I would like to move for a two-year-certain time frame on the moratorium itself.

Lauber: If we had had that motion when we passed the moratorium it would have expired before the Secretary acted.

Robin Samuelson: I'm riding the fence on this really close. I'm having real heartburn with this '92 to '94 provision. I'd like to request a 5-minute break so I can go talk to . . .

Lauber: O.K., I've been asked by someone else the same thing; we'll take a break.

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Lauber: Let's come back to order. All right. We have before us Mr. Mace's motion. Is there any further discussion?

Hegge: I'd just I guess like some confirmation from Lisa that we have adequately addressed the concerns of the Secretary, that this is going to fulfill the expectations that they have of it and be able to be passed.

Pennoyer: I'm sorry, did you ask me a question? Is it the same question as before?

Hegge: I want to make sure that this fully addresses the concerns that you had in rejecting the original moratorium.

Pennoyer: I think it addresses the concerns to . . . there are various degrees of addressing the concerns. It certainly addresses each of the concerns mentioned. It talks about . . . this is the revised . . . are we talking about the revised proposal that Mr. Pereyra presented. . . it does limit crossovers; it expands but limits crossover, eligibility to fish in either fishery; it reduces the actual eligibility to '88 to '92, it does that and it removes sablefish and halibut.

I think it addresses each one of the concerns that were raised to a significant degree. Are you going to say it guarantees it? I don't know I can issue guarantees, but it does address each of these concerns.

Lauber: Are we talking about the whole package, or Mr. Mace's motion which is what we're voting on.

Pennoyer: I don't know, Mr. Chairman.

Pautzke: We're only voting on Mr. Mace's motion.

Hegge: But, I have a question., Mr. Pennoyer said it reduces from 1980 to 1988 to 1992, and I just didn't understand that in Mr. Mace's motion. I though Mr. Mace's motion was 1980 to 1992.

Pennoyer: There's a lot of confusion of this. Mr. Mace's motion, all the things in here are included, it's just substituted the new (5), so the requirements in (3), cut-off '92, (4), changing it to '88 to '92, those stay in. Basically it 's '88 to '92; if you didn't fish in that period, you don't get in period. You've allowed people to use past fishing practices and current fishing practices to determine whether they get crab and groundfish moratorium permits, but they had to have fished '88 to '92. That's the eligible period; you've simply said, now if you're in there, and by the way if you fished crab, let's say you're a groundfish fisherman, you fished crab outside that period, your catch history includes crab within these dates, then you get a crab permit. It doesn't have any crossover, it's just eligibility.

Hegge: Further, I understand that if we send it back and it did pass that the Secretary would then only be limited to 60 days to pass or reject it?

Pennoyer: That's correct.

Lauber: Is there any further discussion, are you ready for the question? Before we do that, I've been asked about our new member, Dr. Fluharty's eligibility to vote, because of the so-called 45-day rule and have asked NOAA General Counsel to give an opinion or comments or whatever to clarify.

Lindeman: There is a section in the Magnuson Act that says whenever the Secretary makes an appointment to the Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council, and it's our view that that 45-day requirement is directed at the Secretary and it doesn't prohibit a person, an appointee, from voting at a Council meeting. There's no legal reason to make an appointee wait 45 days before voting on Council matters.

Lauber: So, the ruling of the NOAA General Counsel is that Mr. Fluharty is a duly appointed members with all rights and privileges thereof?

Lindeman: Correct, Mr. Chairman.

Tillion: Just one thing on that. I'm very glad to see her rendering it that way. I happen to not want to take that ever to court, cause I don't necessarily think you're right, but that's fine. And so therefore, I would suggest that our next meeting that anything that we voted for that was so critical it was within one vote, we'd better substantiate that vote at a later date. Forty-five days to me, is that not page 129 of the Magnuson Act, right?

[Miscellaneous comments]

Lauber: . . . The interesting point of that is, of course that 45 days of today on the issue we're now voting on which gives the Secretary 60 days to act, good luck. But I did want to make that clear so people are aware of the situation and clarify it, so, we welcome . . .

Millikan: Do we need the new amendments in writing?

Lauber: We will have to have them before the final vote, but at this point. . .

Pennoyer: Mr. Chairman, I believe you have it in writing anyway. I think if you cross out existing (5) and use substitute (5); filling in the date of February 9, 1992 in the blank, that is the motion. (5) is the substitute (5) and when you get to the final vote then you just use substitute (5) cross out [the original] (5). . .

Millikan: February 9, 1992?

Pautzke: No, September 29, 1994 would be the last line.

Pennoyer: I'm operating off an old draft, I'm sorry.

Lauber: Is that your understanding, Mr. Mace?

Mace: Yes. . .

Lauber: All right. We're voting then on Substitute #5 which has just been passed out in writing, for the record.

Pautzke: Mr. Chairman, to de-confuse it, I think you should use the original substitute (5) and just put in the blank, September 29, 1994, because that speaks to crossovers only, and this other one mixes in the eligibility to even be in the moratorium or not.

Lauber: O.K., so to make it clear, we're actually talking about what I've listed as moratorium motion #2, written one, Substitute for (5), which would read, "Restrict eligibility to receive a groundfish or crab moratorium permit to those vessels with fishing history in the respective fishery between January 1, 1980 and September 29, 1994.

Pautzke: And (3) and (4) still maintains the window of '88 to '92.

Lauber: We're not voting on that at this time, we're only voting on. . .

Pennoyer: Mr. Chairman, the one clarification is after the word fishery, you put in the word '(fisheries)' just as a clarification that it's either one or both. So it says, "his fishing history in the respective fishery," and Mr. Mace's motion had a parentheses (fisheries), and I think it just clarified the fact that you can get both.

Lauber: O.K., any further discussion, are you ready for the question? We will call the roll.

Pautzke:	Hegge	No
	Mace	Yes
	Millikan	Yes
	Pennoyer	Yes
	Pereyra	Yes
	Rosier	No
	Samuelsen	No
	Tillion	No
	Behnken	No
	Fluharty	Yes
	Lauber	No

**Failed.**

Pereyra: May I speak to the original motion, now? The original motion contains no restrictions on crossovers and it's my considered judgement that what we've done here, we've set ourselves up to have the moratorium, if the moratorium passes, to come back to us, because I don't think what we've done right here at this present time, the way this motion sits, I don't think it addresses the concerns expressed by the Secretary in the rejection of the original moratorium that we passed.

Millikan: A question on Dr. Pereyra's comment. If I understand this right, we're still addressing moratorium motion 2 with the original crossover motion, which says, "restrict crossovers between groundfish and crab. . ."

Pereyra (and others): No. The substitute failed, . . .

Pautzke: So, now you still have an amendment on the floor, which is to delete (5).

Millikan: O.K., that's the motion.

Pereyra: Point of order.

Lauber: State your point of order.

Pereyra: If the substitute fails, doesn't the motion carry?

Pautzke: If it passes, it carries the amendment.

Lauber: It could be subject to amendment now, again. It didn't carry, it just. . .the amendment failed, so now you have one amendment on the floor.

Dave Hanson (Council Parliamentarian): Mr. Chairman, on certain things the Chair may rule that that carries, but it's the Chair's discretion where that is not the case.

Pereyra: So, now we're voting on Mr. Hegge's amendment? Seems like two votes on the same issue, but that's all right, I don't mind that. It'll just go across the other way, it'll be 6 to 5. . .

Lauber: Will you state the amendment we have on the floor?

Pautzke: To delete provision (5) which is a restriction of crossovers.

[several calls for the Question]

Hegge: The comment that I would have is that by the other amendments that we have, removing the halibut and sablefish, by changing the moratorium dates, we have significantly reduce the number of vessels that will be eligible to come back into the fishery while at the same time retaining the vessels that are in the fishery and retaining the original intent of the Council to allow those vessels that are under the moratorium dates to move within that fishery which has always been viewed as one fishery; one moratorium for groundfish and crab fishery. They have the flexibility to move within that area to adapt until such time as we do follow through on comprehensive rationalization. I guess I have to defer to Mr. Pennoyer again, because certainly we want this; we have saved the date, we have saved the limits on the size, but have we adequately addressed his concerns? I think that we have to a great extent addressed them, but I need some comment from him on that, too.

Pennoyer: Mr. Chairman, I don't know how many times we need to go back through that discussion. I said before that crossovers was a significant concern in the Secretary's letter. Mr. Hegge has asked me if you'd adequately addressed his concerns. By not addressing crossovers I guess I could simply say you haven't addressed the letter of the letter and how that's going to affect the final outcome I can't give you guaranteed up or down vote. I just would say that it did not address crossovers and so Mr. Hegge, it's the same answer I gave you before when we took the vote on whether to restrict crossovers.

[Several calls for the Question]

Lauber: The question is whether to delete (5) from the moratorium motion. Call the roll.

Pautzke:	Mace	No
	Millikan	No
	Pennoyer	No
	Pereyra	No
	Rosier	Yes
	Samuelsen	Yes
	Tillion	Yes
	Behnken	Yes
	Hegge	Yes
	Fluharty	No
	Lauber	Yes

Passes.

Lauber: Now we have before us the amended moratorium motion. Ready for the Question?

David Fluharty: I'd like a clarification. Since this includes the potential to add back in all of the vessels, that at least we're moving in the direction that the Secretary indicated we should move with the halibut vessels, I've received various points of view on whether or not it's likely that the court case will fail; most people feel it won't, but I'd like to have clarification or discussion about what would happen in the event that all of these boats come back in under this same thing, that the IFQ does not go into effect; what would be the impact of this total.

Lauber: You're referring to the halibut/sablefish vessels? I thought we had added language to that that indicated that something. . .it would only be effective if the ITQ program for halibut/sablefish is enacted.

Pautzke: Said, "when both fisheries come under an IFQ program."

Lauber: . . .so this is not absolutely correct; maybe we. . .where do we add this; what should it read now?

Behnken: It's on the most recent draft.

Pennoyer: I think that's already taken care of in a current amendment because I don't think that if the IFQ program doesn't come into place you treat those fisheries anyway. They're excluded from the moratorium IF an IFQ program comes into place, but if it doesn't, then they're back in the same mix they would have been anyhow. So, I think it's taken care of.

Pautzke: I think that the Council possibly ought to clarify just on the record what their intent is forth longevity of moratorium. If you don't say anything, what we're going to do is take it as a three-year, which I think is the original plus two if you want to re-up it because you didn't have anything in place, but then I did hear Commissioner Rosier talk about a two-year, so I'm just wondering what do you want on that? Three or two years?

Rosier: Yes, we've heard the discussion around here in terms of how we got ourselves into this whole debate here today on the moratorium and it seems to me that it's appropriate at this time to . . ., in fact I would move an **October 1, 1996 moratorium sunset date**. I'd like some discussion of this but it seems to me that the Council has to go forward on a comprehensive rationalization program. That was the thing that was left out in the last debate in 1992 over this particular issue on this. I think that with the dates that are currently there, it's a three year, plus a two-year renewal on this and it just seems to me that the Council continues to be held hostage if we don't put forth our feelings as far as the date. We're going to be a lot smarter two years from now; we'll be a lot smarter three years from now in terms of what comprehensive rationalization should be, but I think that we've been trying to freeze the fisheries in place and move ahead with planning for a comprehensive rationalization program. Lacking that, I think the Council, a specific date on this indicating our intent to have a program in place, it seems to me that we're in fact dealing with continuing to be pretty much at the mercy of being blackmailed. I mean, it took us two years to get where we are at the present time. So it's basically a two-year. . .from today, or October 1.

Lindeman: I'll just point out that any sunset date that the Council puts in, say October of '96, any change to that in the event a CRP program hasn't been implemented or approved or whatever, would be an FMP amendment if that was in the FMP language. [tape changeover]

**Tape 17:**

Lindeman, continued: And so it would take analyses and a whole regulatory FMP process. It wouldn't be a simple technical amendment at that time.

Lauber: That would be an inducement to do something by then.

Pennoyer: I fully concur with the feeling that we want to get on with business but there are slips betwixt the cup and the lip and being held hostage for having things happen which can't happen within a period of time, in two years' time you, O.K., we're going to allow new entry if we haven't done something else. I don't think we necessarily want to do that. I think the concept of not allowing new entry unless it's under the auspices of a comprehensive rationalization program, which is what we're doing now, we're not saying the moratorium is going to last for three years, we're saying it's going to last for three years unless something else to substitute that comes along first, then you have a re-up for two years, that's not saying that we're all in agreement that it should take five years to do the job; we're just putting a fail-safe two years on it; it's not a fail-safe, it just means it goes away. It means the Council's got to go back through re-analysis, do all the rest of it, go back through all this whole relatively painful discussion if you haven't go something in place. Not thinking about, not nearly there, but in place; otherwise you're going to leave a gap and I don't see any reason to do that.

Pereyra: I'd like to speak against the motion because if I were on this bank board and I saw this as our final document I would say to myself, well, certainly the Council's intent is to allow people to enter the fishery if in fact



they don't in fact put together a comprehensive rationalization program by the first of October 1996, and I think we'd have a very difficult time arguing that in fact that wasn't our intent because that is what we're saying. Something in place by October 1, 1996, or everything goes away, and that gives me a lot of heartburn so I think I'm going to have to vote against the amendment.

Pautzke: I'd only bring up one point and that's the analytical task load here. We could be, with your staff, you could be in the thick of studying throughout next summer and into the fall any comprehensive rationalization plan past your license program if you decide to go past that, with IFQs. If you are going to put a sunset date in here of October 1996, that quickly, then probably in the fall of '95 you're going to have to switch your staff off of whatever you're doing on your overall comprehensive plan and have them start looking at the moratorium things if you decide you want to re-up it again because we're going to have to get it off to the Secretary by early in '96 unless you're going to use some kind of emergency rule. So, there is going to be some tasking problems if you have that quick of a trigger. I'd just offer that.

Tillion: If we don't have that quick of a trigger, we'll dwaddle. I mean, if we're going to get this thing in gear, let's put it in gear and vote. We've got some proposals prepared; they're going out, or I hope they'll go out, and then let's vote and this one puts a sunset on the Secretary. The Secretary's always been very happy to put sunsets on us. This one's. . . you have the wide-open threat hanging over there like the sword of Damocles and maybe it'll get us moving.

Behnken: A question for Clarence. If the intent of the Council is that in two years that moratorium goes away, then there's no additional analysis, is there? There would only be additional analysis if we at that time said, well, we're going to re-issue a moratorium.

Pautzke: That's true. If you don't give us any instructions to look at re-upping it because something's not going to follow-up, then there's no analysis.

Behnken: So, my understanding from the maker of the motion that he's saying, we will have another program ready to go in place in '96 or we have no moratorium and an open access fishery again. Is that correct?

Rosier: That's correct.

Mace: I'm not going to support it. Our track record and the track record of most moratoria in the United States is not something that disappears very rapidly and we're not going to hold anyone's feet to the fire with a proposal of this type. I think it may last longer than two years but it's better than a stick in the eye and I don't think that we want to impose a sunset on it.

Pautzke: I'd like Steve Pennoyer to tell us if we assume that the Council could get a final decision on license limitation in January, and I've heard some talk that we may not be able to do that because we have too broad of alternatives out right now and we may need to come back and look at it. Say we did get to a final decision in January of 1995, when does he think that the license program, if we acted that quickly, when does he think, if it was approved, that it would actually be implemented, that all the administrative gears would have ground along and there would have been the appeals and everything to actually establish the license program, if we made a final decision next January.

Pennoyer: Well, I guess my problem is I don't know exactly, and you're putting a time-certain on something you think you're going to put a final date on the Secretary to force action. I think what you're doing is I think you're going to force yourselves into a situation, you're going to potentially end up with a gap no matter how hard people try. I think it's unwarranted, I think it's an unreasonable thing to put on this moratorium and I'm afraid it's another reason for partial disapproval of the moratorium. You're adding another thing to the equation here

that could be a reason for why we don't want to go through all the exercise for doing this thing and implementing and everything if it's going to go away in two years, regardless of what else happens. You're assuming a license limitation thing is approvable; I don't think that's an assumption that can be borne out yet, and maybe you think by putting two years on it you're going to force the Secretary to approve the license limitation. I don't think that's a valid assumption, and basically it may or may not get approved depending on how you construct it. I don't even know yet what you're going to construct; you don't either. Well, I assume it's going to be the best thing the Council can come up with, but we don't know what it is, so we don't know its approvability, and you're saying you're going to have approvability not just by this Council, but by the Secretary, of this program or this sunsets at that date and I don't think that that's a message that's appropriate. I think the appropriate message is we don't want new entry in the fishery period until we have another program in place. And I think you're confounding the utility of this moratorium even further by this sunset date; I see no rationale for it.

Lauber: Any further discussion.

Lindeman: A concern that Counsel might have, and I think it's what Steve is addressing at least in part, is that when you're looking at a license limitation or whatever alternatives you're going to be looking at for CRP, the analysis is supposed to drive the decisionmaking and not a deadline, and if you have a sunset date you might find yourself in a position where maybe unintentionally an October '96 deadline is driving the analysis instead of the analysis of alternatives.

Millikan: The Pacific Council took five years to adopt a much simpler, and what I expect to be a much less controversial license limitation plan. We are starting the license limitation plan now; we've got a lot of work done, but there's no way we're going to complete this in two years and we're going to be in a very serious spot if that moratorium fails or we have to remove our staff for six months or a year to re-analyze the moratorium. It just doesn't make any sense to put us in that box. I'm as much in favor of expeditious action as anybody, but when we're going to start to see the controversy is when people know for sure by the various options which ones includes them and which one excludes them, then people come out of the woodwork by the hundreds and the thousand. We just should not have a cut-off date in '96, no way.

Behnken: My understanding of this motion is simply to clarify to the Secretary that we are, we fully intend to move forward as expeditiously as possible with implementing a comprehensive program and I think that a large part of why we didn't do something with prohibiting crossovers is because we intend to move ahead and possibly that's all we need to do, rather than attach a sunset at this time. I thought the sunset was a good idea as a way of noticing our intent, but it sounds like it has the opposite effect.

Rosier: I certainly. . . , Ms. Behnken has hit it on the head here on this. I think we've been wallowing around on this comprehensive rationalization thing and it wasn't until December of last year that we finally began to move down a path leading to comprehensive rationalization. I for one really resent the feeling that we're being blackmailed over the moratorium on this. With that aside, I think that we've got to assure the Secretary that we are being responsive and I certainly hear all of the issues that are being raised here on this and certainly, with the consent of my second I'd like to withdraw the motion, but I think that we needed that discussion at the present time.

Lauber: I think it would either be a good idea to either withdraw it or pass it; failure of it might send the message that we aren't really serious about moving rapidly with either a vessel licensing or ITQ program. By having the debate at least it has aired the issue and noticed at least significant numbers of the Council that want to have that. If there's no objection, the motion is withdrawn.

Hegge: Does that alter the original 3-year sunset that's in the moratorium that we put forward? [Several "no replies"]. So, that stays in place?

Pautzke: The original three years is there from the date of implementation, not from today, but from the date of implementation I think is the way it reads.

Hegge: This is 60 days from when we send it in?

Pautzke: Well, whenever he implements it. Is that what your intent is? That's what I need to put in the record.

Tillion: Well, he has ways of beating us, so it's whenever he signs it.

Lauber: Yes, but . . .60. . .probably should be the first of the year it would be effective and then it would be the next three years.

Hartley: Apparently the Proposed Rule reads, "from the effective date of the moratorium" so when it actually is in place, so . . .not the signing date or the day that they decide to do it.

Lauber: Effective date. Any further discussion before we vote on this motion?

Pereyra: We're on the main motion now, correct? [affirmative reply] It's with, I guess a heavy heart and a light mind that I find myself in a real quandary here. I sincerely want a moratorium that's going to be effective, but in my judgement this is a moratorium in name only. I don't see this moratorium doing anything addressing the problem, that is to freeze the effort in the fisheries where they are. I don't see that happening at all and I think we're deluding ourselves and I think we deluding the public, that's what we're doing, because we're not. I can see what's going to happen now. We're going to have a shift of effort now into the cod fishery; it's going to come and we're going to have a huge debate here about how we're allocating cod, whether it should go to jig boats or pot boats, or longliners or small trawlers or large trawlers, or whatever; that debate is going to become very heated here because that's going to be what we're faced with. Because of what's happened in one of the fisheries, the crab fishery, we're going to see a major shift of effort. They'll be putting longline gear on; they'll be fishing cod with pots and so forth. This is an example of what's going to happen because we have not prevented any future crossovers in the fisheries, and so I find that I'm not going to be able to vote for this moratorium even though I want one because I don't think this is really a moratorium.

Mace: I was on the losing side, but in order to provide as much backing as possible for the Council's position I'm going to vote for the measure. I think a strong showing on the part of the Council has a better chance of getting it through and if we go on a 6 to 5 vote, . . .

Millikan: I share all of Wally's sentiments but I've come to the conclusion that I'm going to support this, only because I believe something is better than nothing and I don't want to give anybody the indication that we don't support some sort of a moratorium. I would not be at all surprised if this moratorium is once again rejected and we're left wide open. I fully expect to see increases in effort in some of the fisheries like Wally described, that we'll be dealing with because of our action today. Serious problems with this moratorium; I don't think we have exercised our obligation to the fisheries that we manage, but to vote against a motion like this that does a little bit, but not enough, would be more irresponsible, so I vote for the motion, but with greatest reluctance.

Lauber: Call the roll on the main motion.

Pautzke:	Millikan	Yes
	Pennoyer	Abstain
	Pereyra	No
	Rosier	Yes
	Samuelsen	Yes
	Tillion	Yes
	Behnken	Yes
	Hegge	Yes
	Fluharty	Yes
	Mace	Yes
	Lauber	Yes

Pass.

Lauber: All right, is there anything else under this agenda item?

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Later in the meeting, the Council was asked by NOAA General Counsel for further discussion:

September 30, 1994

Tape 27:

Lauber: Yesterday, after we took up the moratorium and I believe after Mr. Tillion and Mr. Samuelsen left, NOAA General Counsel raised a question that they and I guess National Marine Fisheries Service wanted submitted to the Council for consideration. At that time I suggested that we hold it until such time as we had a full Council to consider it, so without objection, this looks like as good a time as any. We're waiting for the people from the Western Pacific Council, their chairman and executive director as well as the Pacific Council chairman and executive director to appear and we'll go into Pacific pelagics. Maybe we can take up this issue at this time, so Steve or Ms. Lindeman, if you wanted to cover. . .did you hear anything that I said? My suspicions are confirmed. Now is the time to bring up your moratorium question on severability.

Lindeman: After the action on the moratorium yesterday I had some conversations with General Counsel and expressed my concerns that I didn't think that a lot of new rationale had been placed in the record justifying the crossover provisions and the concerns that the Secretary had raised in his disapproval letter, and what I'd like is to get some kind of expression of intent from the Council, either through a motion, well, actually what they would like is somebody to make a motion and get a recorded vote on whether or not the crossover provision could be severable from the moratorium package.

Pereyra: Point of information. How can you sever them? It's an integral part of the moratorium; I'm a little bit confused because if you go ahead and sever them, they are directly interrelated, you can't have one without the other.

Lindeman: That's the question I'm raising, whether or not when the Secretary reviews the revised moratorium that you've recommended, in looking at the provisions, if there are any, for example the crossover provision, that the Secretary doesn't feel has been justified, would the Council consider that provision so integrally related with the package that if it was disapproved it would change the basic thrust of the program that the Council had recommended. And if it is so fundamental to what you came up with, then we would regard it as not being able to be partially disapproved. If not, then possibly the Secretary could go through and partially disapprove that and send the rest of it forward, and that's the question I'm raising.

Pereyra: Does that mean, then, that if it was partially disapproved and the Council decided to just table the crossover provision, that the rest of package would go forward and implemented.

Lindeman: Yes, it could be.

Pereyra: That doesn't make any sense to me all. I mean, that's like going outside in freezing weather and taking off half your clothes and wondering why you're freezing to death. [laughter and miscellaneous comments]

Behnken: I guess it seems to me that the importance of that moratorium is getting that date in place. We're working on a limited entry program that will control the crossover aspect of vessels going between fisheries and what really is important to this Council is that we define the players, close the door on new entrants, control this increasing capital or vessels coming from the other side of the country, and get that control date in place. And, that would be my sense of the moratorium anyway and we'd go on from there.

Pereyra: My sense, and I believe it was certainly stated by my colleague on the left here, Mr. Rosier, and that was that what we're trying to do, we're trying to freeze these things in their present state and I don't see how you can really address the overall problem of freezing things in their present state unless you also take into consideration the crossover provision because they're not mutually exclusive, they are interrelated. They both involve vessels moving into one fishery or another and it's one thing if you've got a vessel from the East Coast which is a dragger and he comes into the groundfish fishery; the other one is if you have a crabber that's already here that's a moratorium-qualified vessel within that 4-year time period, and he crosses over into the groundfish fishery. The effect is still the same, so I think that you have to. . . I don't think you can sever them, I think that you have to look at it as a package and the Secretary's going to have to bite the bullet on this thing; he's going to have to look at it and say, yes, it's approvable, [or] no, it's not. I don't think you can separate them.

Pennoyer: Mr. Pereyra, your original motion separated them. And you originally moved to drop crossovers. I don't understand exactly where you're coming from at this point.

Pereyra: Well, that means that. . . we originally moved, I didn't move that, somebody else did. We originally moved to have unlimited crossovers; that's part of the moratorium package.

Pennoyer: That was the original motion. Your amendment would have restricted that by eliminating unrestricted crossovers. You thought it was severable and it was denied. I guess the question now is if it came down to it and the whole thing was going to go down because of crossovers, I'm not saying that that's what the ultimate result would be, but if it was, . . . crossovers are such an integral part of this the Council thinks that it's a non-severable issue. That what I think General Counsel is asking. Given that choice, is it a non-severable issue; is it so integral to the moratorium and to the need to preserve quote status quo, and we can argue quite a bit how you define that, in the fisheries that unless you allow prospective crossover, not what's already occurred, but prospective crossovers, does that make the moratorium totally flawed if you don't allow that? Is it therefore severable?

Mace: I don't know, I'm sort of perplexed. The Council moved yesterday and if you don't understand what the action was that's one problem, but the Secretary has authority to partially disapprove any action the Council takes, and so why are we being asked our opinion on this. He can do it anyway.

Lauber: I think not. This is a limited entry. . . and, Counsellor I don't believe you'd be asking this, and I think Mr. Pennoyer or Ms. Lindeman explained that that was one of the situations they ran into when they rejected the whole thing. They felt that they couldn't sever it, partially disapprove it, and if they had had that option they probably would have exercised it the first time around, the letter would have read differently. But they legally felt that they couldn't do that and now, the feeling is if they can get us to say we don't mind, then that would change it, so. . . is that a fair representation of. . .

Lindeman: Actually, the issue about the severability of provisions is the same with limited access as well as with non-limited access proposals. But where it divides is that if the Secretary disapproves part . . . or . . . the standard for disapproval doesn't change. . . getting this confused. Disapproval cannot change the thrust of the program that the Council recommended. With both, the Secretary rejects it, sends it back to the Council. For limited access proposals, if the Council decides not to revise, then it just sits. With non-limited access the Secretary does have authority under the Magnuson Act to go ahead and initiate his own, to take care of it. But in this case, we reviewed this and decided that, initially, that crossovers were a fundamental part of the program that the Council had come up with and it created a problem because then the Secretary could not partially disapprove. And I think that that's what the Secretary would be faced with this time.

Millikan: Seems to me we're getting about as clear a signal as we can possibly get that this moratorium as was passed yesterday is not going to cut it, that we're going to get it thrown back at us and I guess those that voted in favor of the package are going to have to consider whether or not they're willing to have it rejected and have no moratorium or not. It's just about that simple. As I'm listening and listened yesterday and read the letter, if there's no crossover provision, no prohibition of crossovers, we're not going to have a moratorium, so I guess we just have to see who blinks first, us or the Secretary.

Hegge: Two things. I don't see how the Secretary would disapprove a portion that isn't there, sever a portion that isn't there. We have one moratorium on groundfish and crab that we're sending back; we're not sending back the two or the crossovers, so I don't see how he could take out a part that isn't there. I guess beyond that, often in the time I've been involved in the Council, a Counsellor has advised us that our record wasn't complete and in what areas it wasn't complete and then we have taken the time and the effort as a Council if we felt that the justification was there, to make the record complete and I guess maybe that's what we should do now if that's where we're at, and also probably to review slightly the record that we're working off of from two years ago. These were significant votes, they weren't 6-5 votes, they were significant votes. The Council and industry wanted this moratorium to go forward in this form and with that type of support I think that the ability is there to make that record as complete as necessary.

Pereyra: This is a rather puzzling issue because what we're sending back to the Secretary is really. . . is silent on crossovers; it's silent on crossovers, there's no mention of crossovers in it whatsoever, what we're sending back. So, the Secretary now is going to have a moratorium package that has the dates in it and the other aspects to it, and the Secretary's going to have to look at that and the Secretary's going to look at that and say, 'in the area of crossovers this moratorium package is silent and I feel,' maybe I'm wrong, but let me put the words in the Secretary's mouth, 'I feel that this will not prevent significant increases of capital going into certain fisheries; it's not freezing the status quo, therefore it doesn't do the job.' So the Secretary comes back to us and says you, Council, have to do something about crossovers. But meanwhile, I'm going to go forward with this, if we sever it. And, so, we debate, and Mr. Hegge's arguments notwithstanding, the Council decides 9-1 with one abstention to table any further consideration of crossovers, for example. Meanwhile, the reason the Secretary has come out and said that in fact this moratorium package doesn't do the job without some sort of crossover provision and he's going forward without it. Now, how can you possibly continue forward with it? Don't you at that point in time have to say, whoops, it doesn't go any further? But what happens if it gets implemented then without a crossover provision in it?

Lauber: I've been asked for a break, let's take a break.

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Lauber: Council will come back to order. Ms. Behnken.

Behnken: Are you ready for a motion on this?

Lauber: No motion on the floor, go.

Behnken: Well, I would move that we, in response to this question, that we send this package as a whole and that we re-confirm that it's the package we believe is the way a moratorium should look, and . . .

Samuelson: Second.

Lauber: Speak to your motion.

Behnken: I think that we've talked about this moratorium a lot. Very clearly the intent of this Council is we need to close that door, to stop the . . . just define who the people are in these fisheries and it's something we noticed industry of two years ago and I know I've answered countless phone calls, talked to a lot of people about the moratorium that the Council put together, told them it hasn't been approved by the Secretary, but said this is the best available information for you to act on, sent them the True North publication on the moratorium. People have made plans based on that, made investments, decided what kind of boat they wanted to have so that they could be part of those two fisheries. A moratorium to me is a defining of the fleet and when we start getting into the next step, which is our license program, at that point we'll start deciding what people do with their business. But we're not there yet. I think the shape the moratorium is in is the shape it should have as the Secretary approves it.

Millikan: I can't vote for the motion as it's stated. I certainly can't say that this is the way a moratorium should look, because I don't think it is and I think my votes yesterday pretty well demonstrated that. So, I'm going to vote against the motion.

Pennoyer: I think that what is being asked is for the Council to either sever the question of prospective crossovers. I'm not talking about eligibility, whatever eligibility period you choose, it was '80 to '94 the other day, whatever it happens to be, you can argue about that, but that's not what I'm talking about. The prospective crossover question. Why is it appropriate to treat this group of vessels under these three separate management plans as a unit while excluding other people who might want to enter some fishery for the first time as well. You have crab fishery in the Bering Sea that averages 300-350 boats a year; it's under a very special management plan, that currently is managed by the State under Council oversight, and why is it appropriate that some 2,000 groundfish vessels, now I'm not saying they all would do it, because obviously some are of a size and configuration that probably couldn't carry a big king crab pot anyway, but not enter that fishery. Or, why is it appropriate that they be allowed to enter that fishery prospectively, not if they've done it already and they're part of this envelope. . . [tape changeover]

Tape 28:

Pennoyer, continued: [envelope] of entry into that fishery already, that's one thing, but why should they prospectively be allowed to in any number enter that fishery? Now, I know the crab stocks are down and right at the moment it might go the other way, but an assessment next year might change that picture. Why is that appropriate whereas, again, a crab fisherman in the Gulf of Alaska who is out of business and doesn't have anything else to do, can't enter the groundfish fishery for the first time? What is the appropriate nature of what you've set up and why is it necessary within what you have done, to allow prospective crossovers? You're not freezing the fleet, you're freezing everybody that might have been in this huge envelope, but for one fishery in particular, or the other, you're not freezing it. Now, I know you can get down to discussion where you do this by species and subarea and some of the public comment got into that in letters that were sent in, but you have defined three big areas: groundfish in general, you have the Gulf and the Bering Sea plan, and crab. Why is it appropriate that you be allowed to do anything within that envelope even if it adds 100% or more to the effort in one of those fisheries that you've defined by FMP, but it's not appropriate for somebody outside that envelope

to get in. And, I've heard the discussions of well, we're going to get to that next, and we're going to do, but you're not freezing status quo in those fisheries, you're freezing status quo in terms of new vessel entry in the total North Pacific envelope under the Council's jurisdiction but you're freezing it in any of those fisheries, because by conversion, refitting, whatever, you can increase the effort very substantially in those FMPs, and I guess it's still not clear on the record why that's an appropriate way to go. Grant you, you could just pick a cut-off day. You can take this thing in any increment you want and say, O.K., first thing, we're just going to have a cut-off date, which is sort of what you did, and not even worry about making it last year's fishery, whatever. You could pick a cut-off date, but why is it essential to the Council's going on to the next step to allow prospective entry into these other fisheries. I know you plan on doing a license limitation in two years or whatever time it takes to do it, and you plan to go to IFQ at some point. But you're setting a stage that has no guarantee these other things are going to occur in the timetable you want them to occur. Why set the stage to allow in any interim period of time dramatic expansion in some of these fisheries. I guess that's what's not clear on the record.

Hegge: I reviewed slightly the RIR from our original moratorium; we did discuss crossovers very brief in there but it's very clear the Council does not restrict vessels from crossing among fisheries regardless of prior participation. That was our intent. There was quite a bit of discussion that led up to realization of that intent. There was recognition that as you look through the people in the audience and the fleet, the people have stayed pretty much the same over the years, but the hats they wear have changed a lot. They started out as crabbers, they started out as joint venture people, they have as the crabbing has gone by the wayside because of the stock reductions, or new opportunities, gone into other boats or other fisheries. The boats that we see in Alaska are very, very versatile. They're very sturdy, but we have two different groups of boats and this was brought out in the research. We have the halibut boats that basically are halibut boats, smaller, more particularly oriented to just to longlining. And then we have the boats that evolve into the different fisheries. Sometimes they have modulars they put on to go longlining; they're taken off so they can go crabbing. They've adapted to the flexibility of the changing times. And those are the things that we talked about as we were putting this moratorium in. Crab and groundfish are not separable in the North Pacific. Crab fisheries, by their caps, by their restraints, restrain the trawl fisheries. The trawl fisheries affect the crab fisheries. One guy goes trawling one day and takes his doors off and goes crabbing the next. We wanted, during the time of the moratorium for those people to be able to have the flexibility to change, to adapt. We might not get it in a year; it might take three years. We knew we were having influences that were being put on the industry that forced them to change and we wanted them to be able to accommodate that change. This was the reason we allowed it. We did comment that we knew that we could affect the fisheries that way. There was the possibility to increase crabbers that went groundfishing or vice versa. But we acknowledged that this was important and necessary and I think to deny that now, or not recognize it, is inappropriate.

Pautzke: Mr. Pennoyer has asked why the Council thinks it's appropriate that we would allow prospective entry in this flow between the crab fisheries and the groundfish fisheries and back and forth by people who had not participated in those fisheries but were part of the quote North Pacific fisheries fleet. And, I guess I would return the question to him is that, considering the Secretary of Commerce's strategic plans and identification of national concerns on doing something about the overcapitalization problem, considering the fact that you have distressed fisheries all around the United States and therefore you have a surplus of vessels that are looking for other opportunities, why would the Secretary think it's appropriate to turn down the moratorium and thus let all this prospective entry in from vessels from outside the normal population of vessels that do work in the North Pacific, which is a much more broader threat probably to these fisheries up here than the flow back and forth in the crossover provisions.

Pennoyer: Mr. Chairman, that was a question? I don't know if it's rhetorical, or not, but I would say that's a very good point. But, going farther doesn't make it better. I think your question is if we say you haven't gone far enough, then going even farther by taking off constraints doesn't make it better. I don't disagree with that. . .



Pautzke: . . . [unintelligible] holding action.

Pennoyer: And the question is, in a holding action why are prospective crossovers an essential part of a holding action? Not what you've had already, not what has occurred already, but why are prospective crossovers an essential part of your holding action. Why is a capability that hadn't been expressed as one of the original motions had put over 14 years become an essential part of your holding action, particularly if your holding action, in the Secretary's view, can't be defined by date. We don't know for sure when this thing, whatever you do, is one, approvable, and second, how long it's going to take to do. So, why are prospective crossovers, and I don't think that. . . I don't know what expression you're going to get, but I doubt it's uniform out there either way in terms of the world thinking that they want prospective crossovers into crab or prospective crossovers into groundfish; I think this is a question that Mr. Hegge has indicated universal support. I'm not sure that there's universal support or necessarily even knowledge of exactly what the results of this are going to be, but why is it important, and I'm not saying going in the other direction, opening up the flood gates is better than going part way, but why is it important to your moratorium to allow potentially very significant increases of effort in any one of these fisheries? That's I think the question, Mr. Pautzke, no whether it's better to something than nothing.

Fluharty: Well, if Ron Hegge had said what he's said minutes ago yesterday, I would have thought that that would have been a pretty strong case for the amendment that Wally Pereyra was making in the sense that those vessels with a catch history, those vessels that have demonstrated a versatility through time, those vessels that have shown exactly what it was, were the vessels to which this would be restricted and that sounded like it was a way to actually make it through with something the Secretary might approve. And, I'm curious, Mr. Hegge, if that's really the dilemma of what you're asking for because it sounds like very much what could be supported.

Hegge: I think that probably in the time frame I mentioned at the time that Wally's arguments and mine were the same. The thing of it is that I don't think it's appropriate, nor did we think it appropriate at the time, to say that people that had made that crossover prior to 1992, for instance, were the only ones that would be capable of being included. We viewed it again as a single moratorium over the total fisheries recognizing that, and I guess this is in response to Mr. Pennoyer, too, the reason that we have to allow for this opportunity for expansion is that we are putting some extreme pressures on the fleet. Bycatch has become a glaring thing in the whole public eye; we're putting closures on people, we're putting restrictions that make it impossible for them to continue in the way that they have fished in the past. In order to accomplish that we also have to provide people the opportunity to adapt. For instance, we just made a very major change in the P. cod fishery in the Bering Sea where we allocated a substantial amount to fixed gear. It did allow probably some additional expansion, a number of people have gone fishing with both longline, pots and jigs. They're new entrants, there's no question about it, under this scenario they would be new entrants. But the benefit that we've given the Nation by that is substantial. And the benefit that we have accomplished as fishery managers is substantial. We have continued to take a resource with a much greatly minimized impact. We recognized at the time that we were doing this that we were going to continue to be making substantial demands on the industry; changes on the industry. I don't think that we envisioned that we could cut off at September 30, or February 29, or any of those things the way that we operate these fisheries. We know that we're in a time of dynamic change and I think that is my response to why we could not do that.

Pereyra: Several comments. First, regards to Mr. Hegge's reference to '92, and the inappropriateness of just cutting off at '92 in regards to crossover, I think we agreed to that and put forth the motion to move it up to September 29, 1994. I suppose if I were to make that motion today, I'd make it September 30, 1994. But, in any event, I think there is a reason for taking into consideration the more recent individuals in that area. During this debate we have repeatedly gone back to referencing the discussion the Council had and the justification the Council built in the record for the original moratorium package. That package has been deemed faulty. I think I mentioned that yesterday; the Secretary rejected it and gave us all the reasons why. I think it's counter-productive for us to go back and use that as the basis for justifying continuing the same faulty package, and in

that regard, I had an AP member come to me during one of the breaks, and he said, you know I originally supported liberal crossover provisions, but when the Secretary turned down the package as it went back, he said I got the message and I want to see a moratorium package go through. He says I changed my vote and I supported the AP's recommendation. I've had several fishermen come to me and question what is the Council really trying to do? Are they deaf? Can't they hear what's being said to them, is their intent really to make certain that this package will not be approved?, because that's what it appeared to them. I have not had one fisherman come to me and say that he thought that what the Council did was appropriate, so I think people are getting a different message now and I think it's incumbent upon the Council to respond to that message and I don't think we have, and so in that regard, I can't support Ms. Behnken's motion and I would vote against it.

Tillion: We went through this two years ago, we had this debate. Actually the State of Alaska's position was to not allow crossovers. Things have been done; we're going to have to address license limitation and ITQ; let's get on with that. What's important here is the date; I'm not willing to change a great deal from what the Council decided back in '92; it was unanimous. A couple of them that had lost, and there were only two of us, two groups, Krygier voting for the Department, that were opposed to the crossover. It's too late to make the change there, let's get on with the limited entry and the ITQs and solve our problems.

Behnken: Just briefly. I would disagree with what Mr. Pereyra has just said about us being deaf to the Secretary's comments on the moratorium. I think we made some fairly significant changes in response to those comments with dropping quite a few vessels out from the moratorium and that's as far as I think we need to go and as far as we should go given the plans this industry has made based on a decision we made some two years ago.

Samuelson: I'll be supporting the motion. Maybe Mr. Pereyra and I need to stand side by side because I surely got a different story than the people that talked to him. I wasn't here two years ago when this vote took place, but I look at what message did this Council ship out to industry with the cut-off date. . . [someone coughing; couldn't hear]. . . pretty strong signal. The expectations of the industry out there, and most of the people sitting out here are here just to keep what they've got so another sector doesn't take it away from them. I think with this motion we'll be consistent, the Council will be consistent on what happened in '92 until today. I viewed the expansion of the '92 to '94 to September 29th, exactly. . . I viewed it that if it was 1996, we'd still be amending that last date in there, '92 to September 29, 1996. Seems to be the way we operate in the Council process in allowing more boats, so I'm going to go with Linda's motion because I think that is what the industry expected out of this Council. That's the message we delivered to the industry and I think it's consistent and if we change, this Council, what it's saying, I think we would be arbitrary and capricious by coming out with a new date, with no public input, and we'd be circumventing the public process, a last-minute run by the Council with no public input.

Mace: I don't see much movement on the part of the Council in so far as the decision yesterday is concerned. My primary concern in making the motion yesterday, which failed 6 to 5, and which I would point out that the Regional Director voted for, was to get this passed. And, I think that the Regional Director is telling us that he's got some problems with it, I realize that we're building a record here; I have not changed my mind. I would still stand by my position yesterday and I think that we're making a mistake in not complying with their concerns.

Pennoyer: We're asking you for the record. . . I admit to Mr. Hegge's statement that if you go back to the original record, just say the Secretary didn't understand it and elaborate on it. And that's something you certainly can do because I'm not sure we all understand everything that's in the record every time two or three years later. But, based on the original rejection, the concept was you had to come up with. . . we needed to come up with another reason that this total envelope picture allowing shifting to any fishery within that envelope, new shifting, made a lot of sense. And, it was essential to the moratorium; not to future license limitation or IFQs. I don't know that I've still heard that and I think there's a very good chance that this amendment would be turned down again unless the crossovers are addressed in some fashion that clearly shows why it's needed to be able to crossover into the

crab or groundfish fishery prospectively, not in the past but prospectively. I'm not trying to beat you over the head; if you think you've said it enough and you're going to vote on it, then go that way. But right now I'm not sure you have.

Pereyra: With regard to prospective need, I think that if one were to support the need for a prospective movement in the fisheries I think the justification exists just as strongly, maybe even stronger, for boats that are in the Gulf of Alaska that are being denied this opportunity. And . . .there are a number of boats down in Oregon that would probably like to have this opportunity that, you know, pioneered the joint venture fisheries and aren't here right now. So, I think that's a long stretch to be able to come up with some kind of a rational prospective justification. The concern that I have is that if we don't, I guess, what you're telling us, if we don't give some sort of separation here, that we're going to get this back and . . .this has to be a partnership; we can sit and fight among ourselves and say the Secretary doesn't know what they're doing and the Secretary can try and say the Council doesn't know what they're doing, but at some point in time we have to come to closure on these issues otherwise we're not going to get anywhere; we're just going to have a total stalemate. So, my previous comments notwithstanding about a little bit of confusion, I guess I have to defer to the superior wisdom of the Counsellor on this particular issue and would hope that we could look at another motion that might be a little more responsive than one that just says, No, and Hell No, and I'm going to reaffirm what you already did and just go on your way. I don't think that's what we should be doing. So I would hope that we would take that into consideration, too, that we have to somehow come together and get closure on this so we can get thing behind us and move on as Mr. Tillion said.

Rosier: I for one don't think that we're telling the Secretary to go to hell. I think we've considered this at length, debated it, certainly people have their feelings out there within industry about the risks of sending it forward as it is, not sending it forward as it is, and certainly I don't deny it, there's a certain amount of risk that's involved there on this, but I still go back to the original reason for the moratorium. The moratorium was to take a snapshot in time in terms of the participants at that point in time and it was a situation in which we would moved directly into the comprehensive rationalization program. Now, we recognize that when we set up the dates that there was going to be people that were going to be on both sides of the dates; there were going to be people that were going to be cut out ultimately under a comprehensive rationalization plan. It still comes down to the fact that that was to be dealt with under the comprehensive rationalization plan, not making the decision who was in and who was out under the moratorium. This was to stop new vessels from entering as I understand it, and it just seems to me that the delays that we had in the implementation of the moratorium, while there was an effect on the fleet out there in terms of how people made their decisions and they tried to comply on this, we had the delay there, we have been unable to reach consensus in terms of the comprehensive rationalization, and it just seems to me that the message that has to go back to the Secretary here is that things have changed. The things have changed that are being affected primarily as a result of our inability to move ahead on a comprehensive rationalization plan. It think that in itself, the Secretary has to be reassured that this Council is in fact going to seriously move ahead with comprehensive rationalization. We've been fighting for two years over this system or that system and it's time for us to get off that particular argument. We've got to move ahead on this and I think that that is the key to this whole thing. I'm not comfortable with seeing major influxes of gear in any particular fishery. But, that was not the ground rules under which people have been operating in recent times and as a result, I think with the public record that was built there, we simply have to move ahead with the moratorium as it was voted yesterday. Thank you.

Hegge: I see in an interview with Mr. Schmitt that right now seven of the eight Councils are considering limited entry programs and he's quoted as saying, "The typical direction that they use is to put a moratorium in first that stops new entrants", and that's what we did. That in doing it we deliberately allowed crossover, I think that has time has progressed that allowance is essential to the moratorium that we put in. A little bit later on in this meeting we're going to hear from a lot of people that want very much to stop a trawl fishery that's a very big trawl fishery. That trawl fishery takes immense amounts of king crab; there's no more king crab season this year. One

group of fishermen in the North Pacific affecting another. Many of the fishermen that fish king crab, some of the fishermen that fish king crab, probably trawl and affect themselves too. We're going to be making restrictions on people, changes, forcing them to change their behavior, maybe even force them to change their fisheries, and I think we have to have the opportunity and the flexibility, flexibility keeps coming up--that's the key word that was in the Federal Register--to allow these crossovers. Mr. Pereyra talked about the Pacific Council down in Oregon and Washington. Well, they've got moratoriums and limited entry programs. The trollers down there have got a very specific program and yet the trollers down there have never been up in the North Pacific participating. That's not a consideration, that we should leave the doors open to other parts of the country. Even the trollers up here are somewhat different. Very few of them go into the groundfish fisheries and we have taken the sablefish/halibut out because we recognize that the halibut boats are somewhat different. We've made significant changes, as Ms. Behnken said, but to me the flexibility and the opportunity to mold this fleet as we go through this moratorium is essential to the moratorium and just the last thing, I want that moratorium just as much as Mr. Pereyra does; I'm trying to respond to Ms. Lindeman's request to build a record as to why we need this aspect of the moratorium, as I think other members of the Council are and I think that that is the message that we should and I hope are getting from Mr. Pennoyer and Ms. Lindeman is that it's not we have to deliver this type of moratorium, but that we have to justify what we deliver, and I'm in hopes that is what we are accomplishing.

Lindeman: One of the issues is that the moratorium, even though it's the first step or whatever toward some CRP system, it still has to comply with the National Standards. And one of the National Standards is that, well, Standard 4, says that if it becomes necessary to allocate or assign fishing privileges among various United States fishermen such allocation should be fair. That's one part of it. And, somehow. . .one of the intents of the moratorium as stated by the Council is to stop new entrants into the fishery. Somehow, the Council needs to show how it is fair to regard a Bering Sea crab fisherman with no Bering Sea groundfish history, how it's fair to regard that crabber as not a new entry into the Bering Sea groundfish fishery, but a Gulf crabber or a scallop fisherman, or a salmon fisherman, whatever, moving to Bering Sea groundfish would be considered a new entrant. And maybe some of the Council members can address that.

Pereyra: In that vein, I'd like to respond to a statement Mr. Rosier made. He stated that the intent was to prevent other vessels from coming into the fisheries up here. That I think is a very narrow construct of what was really the intent. Because, if in fact it was just to prevent other vessels from coming in, I think we would be in clear violation of the very Standard that Ms. Lindeman referenced, and that is National Standard 4. That would not be fair and equitable to United States fishermen. We just can't go out and say well, I'm going to go ahead and draw a fence around and not let anybody in. There has to be a much larger need for a measure of that sort and it has to be much more encompassing and I think that's where we got to this issue. . . [tape changeover]

#### Tape 29:

Pereyra, continued: . . .[issue] of trying to prevent, or trying to create stabilization in the fisheries as they now exist while we got on with the rest of the comprehensive rationalization. And to do that, you have to also take into consideration the crossover issue, which I don't feel we've done so far. The second point I wanted to make, and I will not say another word after this, Mr. Chairman, and that is, we've had a lot of reference to the industry and I have one perspective and others have other perspectives. One of the reflections of the industry and the non-industry to that degree, is the response we get back from the AP. And, when we originally did the original moratorium package, the AP fairly strongly supported the AP package as we sent it back. This time around, the AP's done a flip-flop. Now I certainly would not say a 10-9 vote is a strong message, but it's a stronger message, certainly, that's the messages we got before. So the industry's coming back to us and in fact telling us they want something a little bit different, so that I think is a reflection of the industry also, just to be on the record.

Behnken: Lisa, in response to your question, it seems to me that Mr. Hegge had made some pretty good points about the connection between those Bering Sea groundfish vessels and the Bering Sea crab vessels. That the two

fisheries have significant effects on each other, that the vessels are vessels that are capable of fishing the two fisheries, and that's pretty different from the Gulf fleet as I think we came to realize with dropping out the halibut and sablefish vessels. They're different vessels, there's different expectations, different capabilities, and when we originally crafted this moratorium I think we went through the process of defining those two groups as a whole that we wanted to allow flexibility to come and go between those two fisheries and I know myself that people have made decisions based on having that flexibility, and they may not yet be out there doing both, but I know of boats that have been built or set up or purchased because they are combination vessels capable of doing both and that to me is the reason for keeping that door open. I guess the one other point I would make is that to my mind is a moratorium with crossovers, or . . . with crossovers prohibited does not allow very much flexibility. A person can only come and go between fisheries by purchasing a new vessel. Whereas once we have a license program in place or an IFQ program in place people can buy and sell that access those fisheries much more easily. And for us to have a moratorium that sort of puts that crunch in there of prohibiting crossovers, I think would be really inappropriate at this time.

Rosier: I just wanted to make one small correction in Mr. Pereyra's comments about my previous comments. I was speaking certainly to new vessels, not just vessels. I think that that certainly makes a difference, that we were aiming at new vessel entries, not just vessel entries.

Hegge: Ms. Lindeman actually makes a pretty good argument for me, inadvertently probably. A Gulf of Alaska crab vessel, if he's a king crab vessel, doesn't have much to do anymore because for conservation reasons we had to stop the Gulf of Alaska king crab season about eight years ago. And the remaining fishery, the limited Tanner fishery, certainly doesn't support the boats, so I don't think you have a Gulf of Alaska crab vessel anymore. Because of the opportunity to have the flexibility to go into other fisheries they've adapted and gone on into the North Pacific fisheries, or else possibly left. Scallop vessels have had the opportunity to go into the other fisheries and yet a very limited amount have done that. What they did is they asked to be treated as scallop vessels, just as halibut vessels asked to be treated as halibut vessels. There is a difference, I think. It's a very significant difference. I had another comment or question here about how we intended to preserve the flexibility of the fleet while limiting the increased effort and capitalization. We spent a great deal of time on that. We said that as people replaced vessels through . . . either eligible or lost vessels, that they could not increase the size. We said that existing vessels could not be increased in size more than the amounts that we took into consideration for safety and put a 15% cap on them. We spent considerable time trying to think of ways that we would limit the amount of increased effort that would be done through vessel change and we addressed this in every way that we could and so we did this again, wanting people to be able have the additional flexibility to change within the moratorium.

Millikan: I've always been a champion of flexibility in a fishery that would support flexibility. And, I understand very clearly that's how fishermen make their living and are able to support their families by going where they can. However, in this case, if you look at the status quo, we have an A season for pollock, it's just a very few days; we have a B season, we're starting to partition all sorts of things in different ways and perhaps the Secretary, when he gets all of these amendments back there, all of which are controlling effort in some form or another, gets a clear message that we have too much effort out here in the fishery that exists, and if a vessel has not fished in the last 14 years, as Steve has said today and I said yesterday, I really don't understand why suddenly that particular vessel should have the opportunity now to suddenly switch fisheries. As much as I understand the problem with the ten crab fishermen who wanted into the groundfish fishery, as a manager I have real problems with allowing ten new powerful entrants into a fishery that's already grossly overcapitalized. That's why yesterday I voted for the motion that I think really addresses the crossover problem by . . . if you want to call it crossover. . . it really addresses the eligibility problem by limiting to those boats that have demonstrated the need to do that in the past 14 years. I cannot support, as I did yesterday, the motion, especially if we reaffirm and say this is the way a moratorium should look, say it one more time. I don't think I've changed anybody's mind; I don't think anybody's changed my mind, and I'd like to vote.

Pennoyer: Beating the dead crossover doesn't. . . may not make much more sense to continue the discussion, but I would like to point out in response to Ms. Behnken that moratorium permits are transferable. You can buy into the fishery. Now, I agree you've got to buy a boat, probably, I think that's what you're going to require is a permit with a boat, but probably if you do licenses that could be the same thing. Now, IFQ may not be, it may be portions and pieces. So, it costs something, but again, as Mr. Millikan said, all these fisheries are overcapitalized. There's not a heck of a lot of justification for making it easy for people to enter those fisheries. And, the Council seems to want to say that that flexibility, regardless of the overcapitalization question, at least in the short term, without defining what that is cause we can't, is a necessity; it's necessary to allow any of these fisheries to be further overcapitalized. Now I still don't understand that, so I don't know that I'm going to get any further with more discussion but I still don't understand that need.

Fluharty: I think I would be tempted to vote for this for the reason I voted for it yesterday, which is that I want the Council to be seen as supporting a moratorium, setting a date, setting a pool. I don't think that this satisfies the kinds of things that belong in this kind of recommendation. From just what I've heard, I haven't actually seen the text of what, how this would read, it does seem to me that a strong statement needs to come forth from this Council saying that we send this forward knowing full well that there will be significant efforts through the programs of limited entry or licensing or IFQ programs and it's the intent of the Council to move in that direction and that this preserves a certain kind of option. I think we have to be very explicit in the way that the intent of the Council gets expressed acknowledging that what we have done is what Rolly Schmitten calls the first step, and that's defining a pool and no more.

[several calls for the Question]

Pennoyer: Would you mind repeating the motion, Mr. Chairman, what the effect of a yes or no vote is?

Pautzke: The effect of a "yes" vote is to send the package as we approved it yesterday to the Secretary, non-severable.

Millikan: The motion was more than that, I would like to hear the exact wording of the motion, if I may.

Behnken: I'm not sure I can give you the exact wording of the motion, but it was as Mr. Pautzke has presented, that we send this back as a whole and that the crossover, or lack of crossover provisions, be an integral part of that moratorium.

Lauber: I think what you may have interpreted, I interpreted, as we all at some time, except me since I don't make motions, tend to make a motion and don't stop at that time and enter into debate. But this is usually taken care of by our Executive Director who stops when the motion is made and doesn't make the debate. I think you immediately picked up on that and in your debate, very soon after the motion you said you can't vote for the motion because of. . . and at the time I remember thinking that was the reason for the motion, not necessarily contained in the motion. The motion is as stated.

Pennoyer: Clarification, then. A "yes" vote means that you're reaffirming that it's non-severable.  
[affirmative response]

Pautzke:	Pereyra	No
	Rosier	Yes
	Samuelson	Yes
	Tillion	Yes
	Behnken	Yes
	Fluharty	Yes
	Hegge	Yes
	Mace	No
	Millikan	No
	Pennoyer	No
	Lauber	Yes

Pass.

End of this agenda item.

**Moratorium Motion:**

1. Remove halibut and sablefish from the moratorium <sup>when</sup> since both fisheries have ~~now~~ come under an IFQ program.
2. Replace the moratorium appeals process with the appeals process incorporated in the halibut/sablefish IFQ program.
3. Retain the February 9, 1992 moratorium eligibility cut-off date.
4. Change the beginning moratorium eligibility date from January 1, 1980 to January 1, 1988.
5. Restrict crossovers between groundfish and crab fisheries to those vessels with fishing history during the period January 1, 1980 to February 9, 1992 in both crab and groundfish.
6. Fast track the moratorium and place on the December agenda the opportunity for the Council to comment to the Secretary of Commerce on the Proposed Rule.

Substitute for No. 5: Restrict eligibility to receive a groundfish or crab moratorium permit to those vessels with fishing history in the respective fishery between January 1, 1980 and 9/29/94  
^(fisheries)